99TH CONGRESS
2d Session

SENATE

REPORT
99-283

FEDERAL TECHNOLOGY TRANSFER ACT OF 1986

APRIL 21, 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 3773]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 3773) to amend the Stevenson-Wydler Technology Innovation Act of 1980 to promote technology transfer by authorizing Government-operated laboratories to enter into cooperative research agreements and by establishing a Federal Laboratory Consortium for Technology Transfer within the National Science Foundation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of this bill is to improve the transfer of commercially useful technologies from the Federal laboratories and into the private sector. It amends the Stevenson-Wydler Technology Innovation Act of 1980 to allow the Federal laboratories to enter into cooperative research with private industry, universities, and others; it establishes a dual employee award system of royalty sharing and cash awards; and it establishes the Federal Laboratory Consortium for Technology Transfer.

BACKGROUND AND NEEDS

The Federal Government will spend approximately $18 billion in fiscal year 1986 on research and development at over 700 Federal laboratories. These laboratories employ one-sixth of the Nation's scientists and engineers. Although their main purpose is to serve government needs, these laboratories also have produced over 28,000 patents. Many of these inventions may have commercial ap-

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plications. Over the years, however, only approximately 5 percent of Federal patents have been licensed.

There is broad agreement that we can and should improve the flow of technology from these laboratories to the private sector. The National Governors' Association, for example, issued a report in 1983 critical of the lack of cooperation or collaboration between the Federal laboratories and industry or universities.[1]

In addition, in 1982, the White House Science Council created a Federal Laboratory Review Panel, chaired by David Packard. The Panel surveyed both the Government-operated and contractor-operated Federal laboratories. In its 1983 report, the Panel made a number of findings related to the laboratories' missions, personnel, funding, management, and interaction with universities, industry, and outside groups. In its discussion of interaction, the report states:

> The United States can no longer afford the luxury of isolating its government laboratories from university and industry laboratories. Already endowed with the best research institutions in the world, this country is increasingly challenged in its military and economic competitiveness. The national interest demands that the Federal laboratories collaborate with universities and industry to ensure continued advances in scientific knowledge and its translation into useful technology. The Federal laboratories must be more responsive to national needs.
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> The ultimate purpose of Federal support for R&D is to develop the science and technology base needed for a strong national defense, for the health and well-being of U.S. citizens, and for a healthy U.S. economy. Federal laboratories should recognize that they are an important part of the partnership with universities and industry in meeting this goal. A strong cooperative relationship must exist between Federal laboratories, universities, industry and other users of the laboratories' research results.
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> Federal laboratories have felt traditionally that they are part of the government, committed to its highest service and totally dependent on it for support. They perceive industry as an awkward partner with a different value system. Although the degree of interaction with universities and industry varied among the laboratories visited, the Panel feels that this interaction could be increased at all Federal laboratories.[2]

The Panel report concluded that "Federal laboratories should encourage much more access to their facilities by universities and industry," and that "R&D interactions between Federal laboratories and industry should be greatly increased by more exchange of knowledge and personnel, collaborative projects, and industry funding of laboratory work. . . ."[3]

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[1] Technology and Growth, State Initiatives in Technological Innovation National Governors' Association, Sharwin Cowan, (Washington, DC), 1983.

[2] Report of the White House Science Council Federal Laboratory Review Panel, at 11 (1983).

[3] Supra, at 12.

Congress has enacted several laws designed to improve technology transfer. One of the first was the Bayh-Dole Patent and Trademark Amendments of 1980 (Public Law 96–517). As passed, it did not apply to Federal laboratories. Instead, it gave nonprofit organizations (especially universities) and small businesses rights to inventions made under Federal grants and contracts. The new patent policy led to increased efforts by universities to report, license, and develop inventions. In 1984, Congress extended the new policy to Federal laboratories operated by universities and nonprofit corporations (Public Law 98–620).

THE STEVENSON-WYDLER ACT

Also in 1980, Congress enacted the Stevenson-Wydler Technology Innovation Act of 1980 (Public Law 96–480). The act makes the transfer of Federal technology to industry, States, and localities a national policy and the duty of each laboratory. It set aside 0.5 percent of the agencies' research budgets to fund technology transfer. This set-aside may be waived, but the agency must show that it is otherwise accomplishing technology transfer.

The act created Offices of Research and Technology Applications in the larger laboratories to evaluate new technologies, to promote the transfer of those with commercial potential, and to make laboratory resources more available to those outside the laboratory. It also created the Center for the Utilization of Federal Technology in the Department of Commerce as a clearinghouse for information on Federal inventions. Agencies use the resources of the Center for patent licensing and other assistance in transferring technology. The Department of Commerce has placed the Center in the National Technical Information Service. The Center was intended to provide a networking function among the Offices of Research and Technology Applications, but has failed to do so.

Otherwise, most of the Stevenson-Wydler Act has not been implemented. Other major provisions in the act: (1) establish an Office of Industrial Technology, the duties of which are being performed by the Office of Productivity, Technology, and Innovation, in the Department of Commerce; (2) establish a grant program to fund Centers for Industrial Technology at universities to do research of interest to industry (an appropriation for this program in 1981 was rescinded, and the Centers have not been funded since); (3) establish a National Industrial Technology Board, which has never existed; and (4) establish a National Technology medal as a counterpart to the National Science Medal. The President awarded these medals for the first time in 1985 and awarded a second set in March 1986.

COOPERATIVE RESEARCH AND DEVELOPMENT

Despite the Bayh-Dole Act as amended in 1984 and the Stevenson-Wydler Act, the Federal laboratories still face problems and disincentives in trying to transfer technology. This is especially true for those laboratories operated by the Federal Government, as opposed to those operated by contractors. Many of them have no clear legal authority to enter into cooperative research projects. The Secretary of Commerce, in his February 1984 report to the

President and Congress on operations under the Stevenson-Wydler Act stated:

> It appears to be no accident that technology complexes such as Silicon Valley, Route 128, Research Triangle, and Princeton's Forrestal Center have evolved around major universities. Direct access to the university and the university's right to transfer the results of its research on an exclusive basis is an important incentive for business to invest in the further development and commercialization of new technologies. In contrast, Federal laboratories generally have not served as nuclei for similar arrangements. They often perceive themselves as unable to enter into cooperative development arrangements because of organizational and legal restraints. This is one reason why national reviews of Federal laboratories have concluded that too little of the results of laboratory research is used in the private sector.[4]

To improve technology transfer, the Federal laboratories need clear authority to do cooperative research, and they need to be able to exercise that authority at the laboratory level. Agencies need to delegate to their laboratory directors the authority to manage and promote the results of their research. A requirement to go to agency headquarters for approval of industry collaborative arrangements and patent licensing agreements can effectively prevent them. Lengthy headquarters approval delays can cause businesses to lose interest in developing new technologies.

THE FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER

The Federal Laboratory Consortium is an existing ad hoc group of scientists who form a network among the Federal laboratories to transfer technology. It began within Department of Defense laboratories in 1971. It now consists of almost 300 laboratories from 11 agencies. The laboratories appoint employees as representatives to the consortium. The representatives are often the Office of Research and Technology Applications officers at the laboratories. The Consortium is thus an association of those responsible for technology transfer at the working level.

The Consortium is funded by voluntary contributions from the member-agencies. For most of the last decade it funded a program manager at the National Science Foundation who acted as a Washington coordinator with the agencies. The Consortium has not been able to fund this office consistently for the last few years, and the Foundation no longer makes the office space and support available.

LEGISLATIVE HISTORY

The Science, Technology, and Space Subcommittee held three hearings, on April 17, May 2, and July 1, 1985, on technology transfer and the effect of new technologies on economic competitiveness. As a result of the hearings, Senator Gorton introduced S. 1914 on

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[4] The Stevenson-Wydler Technology Innovation Act; Report to the President and Congress from the Secretary of Commerce; February 1984, p. 24.

December 9, 1985, with Senators Danforth, Riegle, Heflin, Gore, Rockefeller, Dole, Hollings, Inouye, D'Amato, Simon, Bingaman, Dixon, Pressler, and Bumpers.

S. 1914 incorporates other legislation designed to allow Federal laboratories to do cooperative research. In the 98th Congress the Senate Committee on the Judiciary reported S. 2172, which included provisions allowing cooperative research and royalty sharing, among other things, but which were removed before the legislation passed the full Senate (Public Law 98–620). Senators Dole and Danforth introduced these provisions as S. 65 in the 99th Congress. Most of S. 65 is included in S. 1914, along with provisions creating the Federal Laboratory Consortium for Technology Transfer and other amendments to the Stevenson-Wydler Act.

The House passed a bill parallel to S. 1914; H.R. 3773, by unanimous vote on December 9, 1985. Both H.R. 3773 and S. 1914 were referred to the Senate Committee on Commerce, Science, and Transportation. On March 13, 1986, the Committee ordered H.R. 3773 reported favorably, with an amendment in the nature of a substitute. The language of the amendment reported by the Committee is that of S. 1914, with minor amendments.

Summary of Major Provisions

As reported, H.R. 3773 would:

1. Improve the technology transfer provisions of the Stevenson-Wydler Act (section 11) by bringing them into conformity with actual practice and by eliminating some waivers;
2. Create the Federal Laboratory Consortium for Technology Transfer, located at the National Bureau of Standards and funded for 5 years through a set-aside equal to 0.005 percent of each agency's research and development budget spent at its laboratories;
3. Permit agencies to allow their laboratories to enter into cooperative research agreements with industry, universities, and others, and to negotiate patent licensing agreements;
4. Direct the head of agencies with large laboratories to use existing law to institute a cash awards program to reward scientific, engineering, and technical personnel; and
5. Require that agencies give at least 15 percent of royalties received from licensing an invention to the inventor, and distribute the balance of any royalties among its laboratories.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 8, 1986.

Hon. JOHN C. DANFORTH,
Chairman, Committee on Commerce, Science, Transportation, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3773, the Federal Technology Transfer Act of 1986, as amended and ordered reported by the Senate Committee on Commerce, Science, and Transportation, March 13, 1986. We estimate that enactment of this bill could result in annual costs to the federal government of up to $2.5 million.

The bill would amend the Stevenson-Wydler Technology Innovation Act of 1980 and would establish a number of procedures to encourage the development of technologies by laboratories owned or operated by the federal government, to facilitate the transfer of such technologies to the public, and to promote cooperation between those laboratories and the private sector. These activities would be funded by a transfer of 0.005 percent of the research and development budgets of federal laboratories in each of fiscal years 1987 through 1991. To the extent that future appropriations may be increased to accommodate the transfer, such activities may result in additional annual costs of about $900,000.

This bill would also require an agency to pay to an inventor at least 15 percent of the royalties deriving from the invention, if the invention was produced by an agency employee using agency resources. The balance of the royalties would be distributed among the agency's laboratories. These payments would be subject to appropriations beginning in fiscal year 1988. Currently, these royalties are paid to the U.S. Treasury. About $1.6 million in royalties were collected in fiscal year 1985.

CBO estimates that payments to inventors and laboratories would result in additional outlays by the federal government of about $1.6 million in fiscal year 1987; this would occur without appropriation action. Additional outlays of up to $1.6 million could occur in each year thereafter, but would be subject to appropriation action.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

RUDOLPH G. PENNER, *Director.*

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

This legislation permits the Federal laboratories to do cooperative research with outside parties, it codifies an existing network of

laboratory employees, and it establishes an employee award system for Federal employees. It does not require new regulations. The legislation anticipates that a significant number of businesses, universities, State agencies, and others will choose to do cooperative research with the laboratories. They will do so voluntarily, however. The provisions allowing agencies to delegate authority should reduce regulatory burdens on industries working with the laboratories.

ECONOMIC IMPACT

This legislation authorizes no new Federal spending. It has two provisions with potential economic effects: (1) A set-aside of 0.005 percent of an agency's research and development budget that it spends on its laboratories; and (2) a pass-through of royalty income to laboratories. Royalties presently go into the Treasury. Both of these economic effects are small (less than $1 million estimated for fiscal year 1987 for (1), above, and $1.6 million for fiscal year 1986 for (2), above). Both expenditures, by increasing incentives to transfer Federal technology to the private sector, should yield benefits to the economy as a whole.

PRIVACY

Private parties that choose to do cooperative research with Federal laboratories may have to report inventions, patents, and royalties, give the laboratories access to research results, and have other similar intrusions on their privacy. These will be voluntary arrangements, however, and the terms will be negotiated before entering into the agreements.

PAPERWORK

This legislation requires a report to Congress from the Department of Commerce every 2 years on the use of the new authorities under the act. It also requires Federal agencies to report on their receipt of and disposition of royalty income as part of their regular budget submissions.

SECTION-BY-SECTION ANALYSIS

SECTION 1

This section provides that this act may be cited as the "Federal Technology Transfer Act of 1986".

SECTION 2

This section contains amendments to the Stevenson-Wydler Technology Innovation Act of 1980. Section 2(a) amends the policy statement to provide that technology transfer efforts should be treated positively in evaluations and promotions of Federal employees. The Committee does not intend that agencies would be required by this section to change their job descriptions and formal employee evaluation and promotion forms.

Section 2(b) changes the size of a laboratory which must have one full-time staff member in its Office of Research and Technology

Applications from a laboratory with a $20 million annual budget to one with 200 or more scientists, engineers, and technicians. It eliminates the waiver of this requirement, but it also changes the requirement from "one professional individual full-time" to "one or more full-time equivalent positions" for those laboratories that use a team approach.

This subsection adds a new function to the Offices of Research and Technology Applications: that of participating with regional, State, and local government programs to transfer technology for the benefit of the area in which the laboratory is located. There is a great deal of activity at the State and local level to promote technological development. This legislation is consistent with the administration's policy to encourage these efforts. It envisions a decentralized approach to technology transfer, in which the laboratories contribute to regional development.

Section 2(c) changes the name of the Center for the Utilization of Federal Technology to the National Technical Information Service, and clarifies its duties. It eliminates the duty to coordinate the activities of the Offices of Research and Technology Applications, which is transferred to the Federal Laboratory Consortium. These changes are designed to reduce confusion and to reflect reality. The Committee intends that the Center for the Utilization of Federal Technology continue to perform its present functions. The Center is within the National Technical Information Service, however, and the Committee believes it is unnecessarily confusing to include the name of the subunit in law.

This subsection also changes the recipient of biannual reports required by the technology transfer provisions in the Stevenson-Wydler Act from the Center for the Utilization of Federal Technology to the Secretary of Commerce.

SECTION 3

This section adds a new section to the Stevenson-Wydler Act to establish the Federal Laboratory Consortium for Technology Transfer. This section establishes the Consortium's duties and membership; provides that the Director of the National Bureau of Standards shall provide it with administrative services on a reimbursable basis; and provides that each agency shall provide the Consortium with an amount equal to 0.005 percent of its laboratories' research and development budgets, which will total approximately $1 million per year for 1987 through 1991.

This funding is intended to be temporary and is not intended to be reauthorized in 1991. Agencies and laboratories may supplement this funding through voluntary contributions, and the Committee intends that voluntary contributions will provide full funding after 1991, including reimbursing the National Bureau of Standards.

The duties of the Consortium include training Federal laboratory employees in technology transfer with the consent of the laboratories involved; helping agencies with technology transfer; providing a clearinghouse at the laboratory level for outside requests for technical assistance; helping laboratories establish programs to provide technical assistance to local communities; and facilitating com-

munication both among the Offices of Research and Technology Applications and between the Offices and outside parties.

The Committee intends that the Consortium exist within the bounds of policy set by the various agencies with Government laboratories. None of its responsibilities is intended to interfere with each agency's ability to set policy for its own laboratories or with the Offices of Research and Technology Applications officers' ability to work directly with each other and with potential users of federal technology. Although the legislation provides for an office at the National Bureau of Standards, the Committee does not intend for the Consortium to change its decentralized organization. Agency heads and laboratory directors will designate the representatives to the Consortium, and they should continue to be, generally, the officer of the Office of Research and Technology Applications. For smaller laboratories, without full-time professionals in these offices, agency heads may choose to designate a single Consortium representative for more than one laboratory.

H.R. 3773 as it passed the House of Representatives places the Consortium at the National Science Foundation. The Committee substitute places the Consortium at the National Bureau of Standards because of the Bureau's extensive contacts and experience with industry. The Committee expects the Consortium to select a person to serve as its Washington, DC representative, to maintain liaison with interested agencies and with the national offices of various common-interest groups, such as trade associations and associations of State and local public officials. The Consortium may obtain additional office space in Washington, DC to facilitate this liaison function; any agency willing to provide such space, on a no-cost or cost-reimbursed basis, may do so.

The fund transfers for the Consortium are to be made to the National Bureau of Standards at the start of each fiscal year in which they are required. These funds should not be subject to controls imposed on National Bureau of Standards funds, such as personnel ceilings and domestic travel limits. The Committee expects the Bureau to transfer funds as requested by the Consortium. The Bureau is not to be held responsible for performing the duties of the Consortium or accountable for the actions of the Consortium.

SECTION 4

This section amends the Stevenson-Wydler Act to clarify the duties of the Secretary of Commerce and to require a biannual report to Congress and the President on how Federal agencies are using the authorities established under this act.

The Secretary of Commerce is to make the Department of Commerce's expertise available to interested agencies to help those agencies make best use of the authorities granted under this act. The Department of Commerce will develop and disseminate techniques for evaluating the commercial potential of inventions, model agreements covering the disposition of inventions for use in establishing cooperative arrangements, and advice and assistance for laboratory directors.

SECTION 5

This section adds a new section to the Stevenson-Wydler Act authorizing agencies to permit their Government-operated laboratories to enter into cooperative research and development arrangements with private industry, other units of Government, universities, or other persons. It authorizes a broad range of cooperative research and development arrangements where there is a mutual interest between the laboratory mission and other levels of government or private sector organizations.

Section 5 defines cooperative agreements as those in which the Federal Government provides resources, but not funds, along with a collaborating party, toward the conduct of specific research or development which is consistent with the missions of the agency. Nevertheless, this section is not intended to prohibit Federal financial contributions as might be authorized and appropriated by other acts of Congress.

To effectuate cooperative research agreements, the section gives Federal laboratories the authority to accept funds, services, and property from the collaborating parties; to agree to grant in advance licenses to patents on inventions made by Federal employees; to waive the Government's right of ownership in inventions made by an employee of a collaborating party; and to permit employees or former employees to help commercialize their inventions, to the extent this is consistent with agency requirements.

Section 5, as well as the other sections of H.R. 3773, make no changes in the conflict of interest laws affecting Federal employees or former Federal employees. The Committee does not believe that this section releases former employees from conflict of interest restraints in current law, and does not intend this result. Agencies have the flexibility under this section to establish standards for cooperative research arrangements which prevent former employees from benefitting unjustly from their former employment. Conversely, laboratories may need the assistance of former employees to develop the commercial potential of inventions, and this provision is intended to allow their participation according to agency standards.

In addition, section 5 does not alter the patent laws to give existing or former Federal employees ownership of inventions discovered in the course of Federal employment. A former employee may file for a patent on an invention made as a Federal employee under current law. Under Executive Order No. 10,096, 15 Fed. Reg. 389 (1950), however, Federal employees must report and assign the rights to all inventions made in the course of their employment to the Federal Government.

The authorities conveyed by section 5 are permissive. Section 5 authorizes but does not require agencies to extend these decentralized authorities to their Government-operated laboratories. Moreover, whenever an agency does extend these authorities to a laboratory director, the director retains discretion to decide into which cooperative agreements, if any, to enter. The director may reject any offer and may use decision criteria, and set such terms and conditions, as the director sees fit, subject only to the requirements set forth in section 5, other applicable law, and agency directives.

A director may, for example, give priority to proposed cooperative agreements which, in the judgment of the director, are most likely to benefit employment in the United States or the technical development of U.S. companies.

Section 5 also allows agencies to permit their laboratories to negotiate and assign or issue patent licenses on inventions the Government owns. Industrial firms may be attracted to a laboratory by interest in an existing invention, and the laboratories need the authority to negotiate directly with firms that may wish to enter into cooperative arrangements to develop the invention further.

Often, collaboration between a laboratory and some other organization can be expected to lead to future inventions. All parties should be clear on who will have what rights to future inventions when the work begins. This amendment allows Federal laboratories to assign rights in future inventions to the cooperating, outside parties. It is anticipated that agencies will normally retain for the Government a paid license to use or have future inventions used in the Government's behalf.

Section 5 defines a laboratory as a "facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research and development by employees of the Federal Government." This is a broad definition which is intended to include the widest possible range of research institutions operated by the Federal Government.

This definition would include, for example, the Earth Resources Observation System Data Center, which the U.S. Geological Survey operates in Sioux Falls, SD. Universities, other Federal agencies, and private companies are interested in establishing a cooperative research institute there for remote sensing applications. The Center would clearly have the authority to participate under this legislation.

Most of the cooperative arrangements and patent assignments are expected to be forms of cooperative agreements as established by section 6305 of title 31, United States Code. Although these cooperative research and development arrangements must be consistent with the missions of the laboratories, the primary purpose of the agreements is to take technologies that originate in the laboratories and to stimulate or support their development and commercialization.

It is expected that these authorities will open an entirely new form of benefit to State and local governments by allowing the Federal laboratories to become active partners and contributors of technologies to promote regional economic development. Where desired, the contributions may be made through foundations or organizations established to advance State and local economic activity, such as the Rio Grande Technology Foundation in New Mexico.

SECTION 6

This section adds a new section 13 to the Stevenson-Wydler Act which establishes a dual employee award system. First, it requires Federal agencies that do a substantial amount of research and development to set up a cash award system to reward scientists and technicians for inventions, innovations, or other outstanding contri-

butions. It directs agencies to use existing authority or multiple authorities for these awards. For example, under section 4502(a) of title 5, United States Code, an agency may award an employee up to $10,000. Section 4502(b) of title 5, United States Code, allows awards up to $25,000 with the concurrence of the Office of Personnel Management. Section 4504 of title 5, United States Code, allows Presidential awards of unlimited amounts. The National Aeronautics and Space Administration has additional authority to award employees up to $100,000 under the National Aeronautics and Space Act of 1958 (42 U.S.C. 2458).

Second, it requires a direct payment of at least fifteen percent of royalties received for the right to use Government-owned inventions to the Federal employee-inventor(s). The Bayh-Dole Act has required universities to share royalties for Federal funded research since 1980. The universities have found royalty sharing with their inventors to be a powerful incentive which increases the number of inventions reported and encourages inventors to contribute to their commercialization. The committee believes this provision will accomplish the same end in Federal laboratories.

The Committee regards 15 percent as a minimum amount and believes the Federal laboratories will learn from the university experience and increase this percentage. The Committee recognizes, however, that agency cultures differ, and agencies such as the National Aeronautics and Space Administration, which has an active employee award system, may want to keep royalty sharing at this minimum.

The new section 13(b) allows Federal agencies to retain royalty income rather than return it to the Treasury. Agencies must transfer the balance of royalties, after paying inventors, to their Government-operated laboratories, with a substantial percentage going to the laboratory which produced the invention. The laboratory may keep all royalties it receives, up to five percent of its annual budget, and 25 percent of royalties in excess of the 5-percent limit. The laboratory may use the income for mission-related research and development, for education programs for laboratory employees, for employee awards, for scientific exchange, and to pay patenting and other costs.

This section is intended to provide predictable incentives to Federal researchers and their laboratory managers to develop the commercial potential of their work. This incentive approach is an innovation in the Federal Government which should be monitored. Accordingly, the new section 13 includes three provisions to insure that royalty income over and above a laboratory's normal budget does not adversely affect the laboratory's primary mission.

First, the new section 13(b)(2) limits the amount of royalties a laboratory may retain in relation to its annual budget, as discussed above. Second, new section 13(d) requires agencies to report on royalty receipts and dispositions to Congress in their annual budget submissions. Third, new section 13(b) requires that, beginning in fiscal year 1988, royalties shall be subject to appropriations.

Beginning in fiscal year 1988, the Committee anticipates that agencies will submit reasonable upper estimates of the royalty amounts they anticipate receiving. The Committee intends that these estimates will be appropriated in addition to regular agency

budgets. The Committee intends that royalty or other income from inventions received after the enactment of this act and before fiscal year 1988 shall be retained by the agency and distributed as provided in this act.

The new section 13(b)(2)(E) provides that agencies may use their royalty income to pay patenting costs and other expenses incidental to managing inventions, including the fees or costs of services of other agencies or other services. In some cases, for example, agencies make arrangements with the National Technical Information Service whereby the Service provides patent and licensing services. This new section allows agencies, if they and the Service agree, to pay for the services out of royalties.

The Committee does not intend, however, that the new section 13 be interpreted as eliminating the Service's existing authority to accept payment for services through an alternative mechanism of user charges. Because the Service's patent licensing program is expected to be increasingly self-sustaining, the Service would run into severe cash-flow problems if it were forced to rely only on delayed payments from a royalty stream. Moreover, the Committee intends that any such user charges shall continue to be exempt from the appropriations process. Therefore, the term "royalties or related income" in new section 13(b)(2) means funds paid by a licensee or assignee for rights to an invention but does not include user charges (as defined in OMB circular No. A-25) paid by such licensee or assigned for retention by the Service as reimbursement for costs of developing licenses or assignments, including payments for foreign patent filing, maintenance, or other costs.

Some representatives of businesses that employ scientists fear that establishing royalty sharing for Federal employees will set a precedent for legislation mandating royalty sharing for private inventors. The Committee believes that the government is different from private industry in that it cannot promote or reward inventors as easily, and that more inventions will be reported and developed if Federal employees have a guaranteed share in potential royalties. The Committee does not intend for this provision affecting Government employees to set a precedent for private employees.

Section 6 includes cash award provisions in addition to royalty sharing so that agencies do not neglect productive employees (and laboratories) who either do not work in commercially productive areas or who contribute to, but do not have their names on, patents. The Committee intends that a substantial percentage of royalties go to the laboratories that produce the inventions. The Committee intends that "a substantial percentage" mean more than half and perhaps all of the royalties. Nevertheless, section 6 allows an agency to distribute royalties to non-commercially productive laboratories as well as those that produce inventions that are transferred to the private sector. The report of the Packard panel emphasized the need for laboratory managers to have discretionary funds to invest in innovative activities in the laboratory. This need exists for these laboratories as well as for those doing commercially applicable work.

SECTION 7

This section authorizes Federal agencies to transfer rights of ownership in an invention to the inventor if the agency does not intend to file for a patent license on the invention or otherwise to move the invention into the private sector. This section is intended to codify the policies expressed in Executive Order No. 10,096, 15 Fed. Reg. 389 (1950).

Under section 7, agencies would file Statutory Invention Disclosures for inventions they determine to have no commercial potential. In some cases, however, the inventor may not agree with this determination. This provision allows the invention to be given to the inventor for patenting and commercial exploitation. It is expected that when this is done, the government will retain its normal right to use the invention without paying royalties. Laboratory employees may also voluntarily transfer to the laboratory the ownership of an invention made outside of assigned duties for patenting and promotion.

SECTION 8

This section contains technical amendments to the Stevenson-Wydler Act. They are generally designed to bring the act into conformity with existing practice. These amendments include repealing the National Industrial Technology Board and changing the name of the Centers for Industrial Technology to Cooperative Research Centers, the name the National Science Foundation uses. There is no authorization for these Centers, however.

Section 8 also amends the Stevenson-Wydler Act to change references to the Office of Industrial Technology to the Assistant Secretary for Productivity, Technology, and Innovation. The Assistant Secretary's office has been performing these functions. The Committee is aware that the administration has proposed reducing the budget of the Assistant Secretary's office. The changes in this bill are not intended to serve as a reauthorization of this office, which is authorized under separate, annual legislation. If Congress follows the administration's proposal, the Committee notes that the Assistant Secretary's office will be fully staffed in 1987, and will continue to exist as a small, executive office after 1987. Therefore, it is not inconsistent with the administration's proposal to bring the act into conformity with existing practice.

The Committee initially considered reauthorizing the Stevenson-Wydler Act, which had a 5-year authorization which expired in 1985. The administration strongly opposed reauthorization. In two hearings in April and May 1985, however, the Department of Commerce expressed its continuing support for the technology transfer provisions in the act (section 11), and its belief that, because they are funded through a set-aside, they did not need to be reauthorized. Department of Commerce officials also stated their intention to fund other provisions of the Act, such as the National Technology Medal and duties being performed by the Office of Productivity, Technology, and Innovation, out of general Department of Commerce funding. The Committee concluded reauthorization would be needed for only those portions of the act, specifically sections 6, 7, and 10, which had never been implemented.

The Committee believes that a separate authorization of sections 6, 7, and 10 of the Stevenson-Wydler Act is not necessary at this time. The Committee intends that the Department of Commerce continue to fund sections 5, 9, 11, 12, and 13 out of its standing authorizations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

Section 3 of that Act

SEC. 3. PURPOSE.

It is the purpose of this Act to improve the economic, environmental, and social well-being of the United States by—

(1) establishing organizations in the executive branch to study and stimulate technology;

(2) promoting technology development through the establishment of [centers for industrial technology] *cooperative research centers*;

(3) stimulating improved utilization of federally funded technology developments by State and local governments and the private sector;

(4) providing encouragement for the development of technology through the recognition of individuals and companies which have made outstanding contributions in technology; and

(5) encouraging the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

Section 4 of that Act

SEC. 4. DEFINITIONS.

As used in this Act, unless the context otherwise requires, the term—

(1) "Office" means the Office of [Industrial Technology] *Productivity, Technology, and Innovation* established under section 5 of this Act.

(2) "Secretary" means the Secretary of Commerce.

(3) ["Director" means the Director of the Office of Industrial Technology], *"Assistant Secretary" means the Assistant Secretary for Productivity, Technology, and Innovation* appointed pursuant to section 5 of this Act.

(4) "Centers" means the [Centers for Industrial Technology] *Cooperative Research Centers* established under section 6 or section 8 of this Act.

(5) "Nonprofit institution" means an organization owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[(6) "Board" means the National Industrial Technology Board established pursuant to section 10.]

[7] (6) "Federal laboratory" means any laboratory, any federally funded research and development center, or any center established under section 6 or section 8 of this Act that is [owned and funded] *owned, leased, or otherwise used by a Federal agency and funded* by the Federal Government, whether operated by the Government or by a contractor.

[8] *(7)* "Supporting agency" means either the Department of Commerce or the National Science Foundation, as appropriate.

(8) "Federal agency" means any executive agency as defined in section 105 of title 5, United States Code, and the military departments, as defined in section 102 of such title.

(9) "Invention" means any invention or discovery which is or may be patentable or otherwise protected under title 35, United States Code, or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

(10) "Made", when used in conjunction with any invention, means the conception or first actual reduction to practice of such invention.".

Section 5 of that Act

SEC. 5. COMMERCE AND TECHNOLOGICAL INNOVATION.

(a) GENERAL.—The Secretary shall establish and maintain an Office of [Industrial Technology] *Productivity, Technology, and Innovation* in accordance with the provisions, findings, and purposes of this Act.

(b) [DIRECTOR] *ASSISTANT SECRETARY.*—The President shall appoint, by and with the advice and consent of the Senate, [a Director of the Office, who shall be compensated at the rate provided for level V of the Executive Schedule in section 5316 of title 5, United States Code.] *an Assistant Secretary for Productivity, Technology, and Innovation.*

(c) DUTIES.—The Secretary, through [the Director] *the Assistant Secretary,* on a continuing basis, shall—

(1) determine the relationships of technological developments and international technology transfers to the output, employment, productivity, and world trade performance of United States and foreign industrial sectors;

(2) determine the influence of economic, labor and other conditions, industrial structure and management, and government policies on technological development in particular industrial sectors worldwide;

(3) identify technological needs, problems, and opportunities within and across industrial sectors that, if addressed, could make a significant contribution to the economy of the United States;

(4) assess whether the capital, technical and other resources being allocated to domestic industrial sectors which are likely to generate new technologies are adequate to meet private and

social demands for goods and services and to promote productivity and economic growth;

(5) propose and support studies and policy experiments, in cooperation with other Federal agencies, to determine the effectiveness of measures with the potential of advancing United States technological innovation;

(6) provide that cooperative efforts to stimulate industrial innovation be undertaken between [the Director] *the Assistant Secretary* and other officials in the Department of Commerce responsible for such areas as trade and economic assistance;

(7) consider government measures with the potential of advancing United States technological innovation and exploiting innovations of foreign origin; and

(8) publish the results of studies and policy experiments.

(d) REPORT.—The Secretary shall prepare and submit to the President and Congress, within 3 years after the date of enactment of this Act, a report on the progress, findings, and conclusions of activities conducted pursuant to sections 5, 6, 8, 11, 12, and 13 of this Act *as then in effect* and recommendations for possible modifications thereof.

Section 6 of that Act

[SEC. 6. CENTERS FOR INDUSTRIAL TECHNOLOGY.] *SEC. 6. COOPERATIVE RESEARCH CENTERS.*

(a) ESTABLISHMENT.—The Secretary shall provide assistance for the establishment of [Centers for Industrial Technology] *Cooperative Research Centers.* Such Centers shall be affiliated with any university, or other nonprofit institution, or group thereof, that applies for and is awarded a grant or enters into a cooperative agreement under this section. The objective of the Centers is to enhance technological innovation through—

(1) the participation of individuals from industry and universities in cooperative technological innovation activities;

(2) the development of the generic research base, important for technological advance and innovative activity, in which individual firms have little incentive to invest, but which may have significant economic or strategic importance, such as manufacturing technology;

(3) the education and training of individuals in the technological innovation process;

(4) the improvement of mechanisms for the dissemination of scientific, engineering, and technical information among universities and industry;

(5) the utilization of the capability and expertise, where appropriate, that exists in Federal laboratories; and

(6) the development of continuing financial support from other mission agencies, from State and local government, and from industry and universities through, among other means, fees, licenses, and royalties.

(b) ACTIVITIES.—The activities of the Centers shall include, but need not be limited to—

(1) research supportive of technological and industrial innovation including cooperative industry-university [basic and applied] research;

(2) assistance to individuals and small businesses in the generation, evaluation and development of technological ideas supportive of industrial innovation and new business ventures;

(3) technical assistance and advisory services to industry, particularly small businesses; and

(4) curriculum development, training, and instruction in invention, entrepreneurship, and industrial innovation.

Each Center need not undertake all of the activities under this subsection.

(c)–(d) * * *

[(e) RESEARCH AND DEVELOPMENT UTILIZATION.—(1) To promote technological innovation and commercialization of research and development efforts, each Center has the option of acquiring title to any invention conceived or made under the auspices of the Center that was supported at least in part by Federal funds: Provided, That—

[(A) the Center reports the invention to the supporting agency together with a list of each country in which the Center elects to file a patent application on the invention;

[(B) said option shall be exercised at the time of disclosure of invention or within such time thereafter as may be provided in the grant or cooperative agreement;

[(C) the Center intends to promote the commercialization of the invention and file a United States patent application;

[(D) royalties be used for compensation of the inventor or for educational or research activities of the Center;

[(E) the Center make periodic reports to the supporting agency, and the supporting agency may treat information contained in such reports as privileged and confidential technical, commercial, and financial information and not subject to disclosures under the Freedom of Information Act; and

[(F) any Federal department or agency shall have the royalty-free right to practice, or have practiced on its behalf, the invention for governmental purposes.

The supporting agency shall have the right to acquire title to any patent on an invention in any country in which the Center elects not to file a patent application or fails to file within a reasonable time.

[(2) Where a Center has retained title to an invention under paragraph (1) of this subsection the supporting agency shall have the right to require the Center or its licensee to grant a nonexclusive, partially exclusive, or exclusive license to a responsible applicants, upon terms that are reasonable under the circumstances, if the supporting agency determines, after public notice and opportunity for hearing, that such action is necessary—

[(A) because the Center or licensee has not taken and is not expected to take timely and effective action to achieve practical application of the invention;

[(B) to meet health, safety, environmental, or national security needs which are not reasonably satisfied by the contractor or licensee; or

[(C) because the granting of exclusive rights in the invention has tended substantially to lessen competition or to result in undue market concentration in the United States in any line of commerce to which the technology relates.

[(3) Any individual, partnership, corporation, association, institution, or other entity adversely affected by a supporting agency determination made under paragraph (2) of this subsection may, at any time within 60 days after the determination is issued, file a petition to the United States Court of Claims which shall have jurisdiction to determine that matter de novo and to affirm, reverse, or modify as appropriate, the determination of the supporting agency.]

(e) RESEARCH AND DEVELOPMENT UTILIZATION.—In the promotion of technological innovation and commercialization of research and development efforts by Centers under this section, chapter 18 of title 35, United States Code, shall apply.

(f) ADDITIONAL CONSIDERATION.—The supporting agency may request the Attorney General's opinion whether the proposed joint research activities of a Center would violate any of the antitrust laws. The Attorney General shall advise the supporting agency of his determination and the reasons for it within 120 days after receipt of such request.

Section 8 of that Act

SEC. 8. NATIONAL SCIENCE FOUNDATION [CENTERS FOR INDUSTRIAL TECHNOLOGY] *COOPERATIVE RESEARCH CENTERS*

(a) ESTABLISHMENT AND PROVISIONS.—The National Science Foundation shall provide assistance for the establishment of [Centers for Industrial Technology] *Cooperative Research Centers*. Such Centers shall be affiliated with a university, or other nonprofit institution, or a group thereof. The objective of the Centers is to enhance technological innovation as provided in section 6(a) through the conduct of activities as provided in section 6(b). [The provisions of sections 6(e) and 6(f) shall apply to Centers established under this section.]

(b)–(c) * * *

Section 9 of that Act

SEC. 9. ADMINISTRATIVE ARRANGEMENTS.

(b)–(c) * * *

(d) COOPERATIVE EFFORTS.—The Secretary and the National Science Foundation shall, on a continuing basis, provide each other the opportunity to comment on any proposed program of activity under section 6, 8, [or 13] *10, or 14* of this Act before funds are committed to such program in order to mount complementary efforts and avoid duplication.

Section 10 of that Act

[SEC. 10. NATIONAL INDUSTRIAL TECHNOLOGY BOARD.

[(a) ESTABLISHMENT.—There shall be established a committee to be known as the National Industrial Technology Board.

[(b) DUTIES.—The Board shall take such steps as may be necessary to review annually the activities of the Office and advise the Secretary and the Director with respect to—

[(1) the formulation and conduct of activities under section 5 of this title;

[(2) the designation and operation of Centers and their programs under section 6 of this Act including assistance in establishing priorities;

[(3) the preparation of the report required under section 5(d); and

[(4) such other matters as the Secretary or Director refers to the Board, including the establishment of Centers under section 8 of this Act, for review and advice.

The Director shall make available to the Board such information, personnel, and administrative services and assistance as it may reasonably require to carry out its duties. The National Science Foundation shall make available to the Board such information and assistance as it may reasonably require to carry out its duties.

[(c) MEMBERSHIP, TERMS, AND POWERS.—(1) The Board shall consist of 15 voting members who shall be appointed by the Secretary. The Director shall serve as a nonvoting member of the Board. The members of the Board shall be individuals who, by reason of knowledge, experience, or training are especially qualified in one or more of the disciplines and fields dealing with technology, labor, and industrial innovation or who are affected by technological innovation. The majority of the members of the Board shall be individuals from industry and business.

[(2) The term of office of a voting member of the Board shall be 3 years, except that of the original appointees, five shall be appointed for a term of 1 year, five shall be appointed for a term of 2 years, and five shall be appointed for a term of 3 years.

[(3) Any individual appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. No individual may be appointed as a voting member after serving more than two full terms as such a member.

[(4) The Board shall select a voting member to serve as the Chairperson and another voting member to serve as the Vice Chairperson. The Vice Chairperson shall perform the functions of the Chairperson in the absence or incapacity of the Chairperson.

[(5) Voting members of the Board may receive compensation at a daily rate for GS–18 of the General Schedule under section 5332 of title 5, United States Code, when actually engaged in the performance of duties of such Board, and may be reimbursed for actual and reasonable expenses incurred in the performance of such duties.]

Section 11 of that Act

[11.] *10.* UTILIZATION OF FEDERAL TECHNOLOGY.

(a) POLICY.—*(1.)* It is the continuing responsibility of the Federal Government to ensure the full use of the results of the Nation's Federal investment in research and development. To this end the Federal Government shall strive where appropriate to transfer fed-

erally owned or originated technology to State and local governments and to the private sector.

(2) Each laboratory director shall ensure that efforts to transfer technology are considered positively in laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in the laboratory.

(b) ESTABLISHMENT OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—Each Federal laboratory shall establish an Office of Research and Technology Applications. Laboratories having existing organizational structures which perform the functions of this section may elect to combine the Office of Research and Technology Applications within the existing organization. The staffing and funding levels for these offices shall be determined between each Federal laboratory and the Federal agency operating or directing the laboratory, except that (1) each laboratory having [a total annual budget exceeding $20,000,000 shall provide at least one professional individual full-time] *200 or more full-time scientific, engineering, and related technical positions shall provide one or more full-time equivalent positions* as staff for its Office of Research and Technology Applications, and (2) after September 30, 1981, each Federal agency which operates or directs one or more Federal laboratories shall make available not less than 0.5 percent of the agency's research and development budget to support the technology transfer function at the agency and at its laboratories, including support of the Office of Research and Technology Applications. The agency head may waive the [requirements set forth in (1) and/or (2) of this subsection] *requirement set forth in clause (2) of the preceding sentence.* If the agency head waives [either requirement (1) or (2)] *such requirement,* the agency head shall submit to Congress at the time the President submits the budget to Congress an explanation of the reasons for the waiver and alternate plans for conducting the technology transfer function at the agency.

(c) FUNCTIONS OF RESEARCH AND TECHNOLOGY APPLICATIONS OFFICES.—

It shall be the function of each Office of Research and Technology Applications—

[(1) to prepare an application assessment of each research and development project in which that laboratory is engaged which has potential for successful application in State or local government or in private industry;]

(1) to prepare application assessments for selected research and development projects in which that laboratory is engaged and which in the opinion of the laboratory may have potential commercial applications;";

(2) to provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry;

(3) to cooperate with and assist [the Center for the Utilization of Federal Technology] *the National Technical Information Service, the Federal Laboratory Consortium for Technology Transfer,* and other organizations which link the research and development resources of that laboratory and the Federal Gov-

ernment as a whole to potential users in State and local government and private industry [; and];

(4) to provide technical assistance [in response to requests from State and local government officials.] *to State and local government officials; and*

(5) to participate, where feasible, in regional, State, and local government programs designed to facilitate or stimulate the transfer of technology for the benefit of the region, State, or local jurisdiction in which the Federal laboratory is located.

Agencies which have established organizational structures outside their Federal laboratories which have as their principal purpose the transfer of federally owned or originated technology to State and local government and to the private sector may elect to perform the functions of this subsection in such organizational structures. No Office of Research and Technology Applications or other organizational structures performing the functions of this subsection shall substantially compete with similar services available in the private sector.

[(d) CENTER FOR THE UTILIZATION OF FEDERAL TECHNOLOGY.—There is hereby established in the Department of Commerce a Center for the Utilization of Federal Technology. The Center for the Utilization of Federal Technology shall—] *(d) DISSEMINATION OF TECHNICAL INFORMATION.—The National Technical Information Service shall—*

(1) serve as a central clearinghouse for the collection, dissemination and transfer of information of federally owned or origninated technologies having potential application to State and local governments and to private industry;

[(2) coordinate the activities of the Offices of Research and Technology Applications of the Federal laboratories;]

[(3)] *(2)* utilize the expertise and services of the National Science Foundation and the [existing] Federal Laboratory Consortium for Technology Transfer; particularly in dealing with State and local governments;

[(4) receive requests for technical assistance from State and local governments and refer these requests to the appropriate Federal laboratories;] *(3) receive requests for technical assistance from State and local governments, respond to such requests with published information available to the Service, and refer such requests to the Federal Laboratory Consortium for Technology Transfer to the extent that such requests require a response involving more than the published information available to the Service;*

[(5)] *(4)* provide funding, at the discretion of the Secretary, for Federal laboratories to provide the assistance specified in subsection [(c)(4)]*(c)(3);* and

[(6)] *(5)* use appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems.

(e) ESTABLISHMENT OF FEDERAL LABORATORY CONSORTIUM FOR TECHNOLOGY TRANSFER.—(1) There is established the Federal Laboratory Consortium for Technology Transfer (hereinafter referred to as the "Consortium") which, in cooperation with Federal laboratories and the private sector, shall—

(A) develop and, with the consent of the Federal laboratory concerned, administer techniques, training courses, and materials concerning technology transfer to increase the awareness of Federal laboratory employees regarding the commercial potential of laboratory technology and innovations;

(B) furnish advice and assistance requested by Federal agencies and laboratories for use in their technology transfer programs (including the planning of seminars for small business and other industry);

(C) provide a clearinghouse, at the laboratory level, for requests for technical assistance from States and units of local governments, businesses, industrial development organizations, not-for-profit organizations (including universities), Federal agencies and laboratories, and other persons, and—

(i) to the extent that a response to such requests can be made with published information available to the National Technical Information Service, refer such requests to that Service; and

(ii) otherwise refer such requests to the appropriate Federal laboratories and agencies;

(D) facilitate communication and coordination between Offices of Research and Technology Applications of Federal laboratories;

(E) utilize (with the consent of the agency involved) the expertise and services of the National Science Foundation, the Department of Commerce, the National Aeronautics and Space Administration, and other Federal agencies, as necessary;

(F) with the consent of any Federal laboratory, facilitate the use by such laboratory of appropriate technology transfer mechanisms such as personnel exchanges and computer-based systems;

(G) with the consent of any Federal laboratory, assist such laboratory to establish programs, such as technical volunteer services, for the purpose of providing technical assistance to communities related to such laboratory; and

(H) facilitate communication and cooperation between Offices of Research and Technology Applications of Federal laboratories and regional, State, and local technology transfer organizations.

(2) The membership of the Consortium shall consist of the Federal laboratories described in clause (1) of subsection (b) and such other laboratories as may choose to join the Consortium. The representatives to the Consortium shall include a senior staff member of each Federal laboratory which is a member of the Consortium and a representative appointed from each Federal agency with one or more member laboratories.

(3) The representatives to the Consortium shall elect a Chairman of the Consortium.

(4) The Director of the National Bureau of Standards shall provide the Consortium, on a reimbursable basis, with administrative services, such as office space, personnel, and support services of the Bureau, as requested by the Consortium and approved by such Director.

(5) Not later than 1 year after the date of the enactment of this subsection, and every year thereafter, the Chairman of the Consortium shall submit a report to the President, to the appropriate authorization and appropriation committees of both Houses of the Congress, and to each agency with respect to which a transfer of funding is made (for the fiscal year or years involved) under paragraph (6), concerning the activities of the Consortium and the expenditures made by it under this subsection during the year for which the report is made.

(6)(A) Subject to subparagraph (B), an amount equal to 0.005 percent of that portion of the research and development budget of each Federal agency that is to be utilized by the laboratories of such agency for a fiscal year referred to in subparagraph (B)(ii) shall be transferred by such agency to the National Bureau of Standards at the beginning of the fiscal year involved. Amounts so transferred shall be provided by the Bureau of the Consortium for the purpose of carrying out activities of the Consortium under this subsection.

(B) A transfer may be made by any Federal agency under subparagraph (A), for any fiscal year, only if—

(i) the amount so transferred by that agency (as determined under such subparagraph) would exceed $10,000; and

(ii) such transfer is made with respect to the fiscal year 1987, 1988, 1989, 1990, or 1991.

(C) The heads of Federal agencies and their designees, and the directors of Federal laboratories, may provide such additional support for operations of the Consortium as they consider appropriate.

[(e)**]***(f)* AGENCY REPORTING.—Each Federal agency which operates or directs one or more Federal laboratories shall prepare biennially a report summarizing the activities performed by that agency and its Federal laboratories pursuant to the provisions of this section. The report shall be transmitted to the **[**Center for the Utilization of Federal Technology**]** *Secretary* by November 1 of each year in which it is due.

(g) FUNCTIONS OF THE SECRETARY.—(1) The Secretary, in consultation with other Federal agencies, may—

(A) make available to interested agencies the expertise of the Department of Commerce regarding the commercial potential of inventions and methods and options for commercialization which are available to Federal laboratories, including research and development limited partnerships;

(B) develop and disseminate to appropriate agency and laboratory personnel model provisions for use on a voluntary basis in cooperative research and development arrangements; and

(C) furnish advice and assistance, upon request, to Federal agencies concerning their cooperative research and development programs and projects.

(2) Two years after the date of enactment of this subsection, and every 2 years thereafter, the Secretary shall submit a report to the President and the Congress on the use by the agencies and the Secretary of the authorities specified in this Act. Other Federal agencies shall, to the extent permitted by law, provide the Secretary with all information necessary to prepare such reports.

SEC. 11. COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS.

(a) GENERAL AUTHORITY.—(1) Each Federal agency may permit the director of any of its Government-operated Federal laboratories—

(A) to enter into cooperative research and development arrangements (subject to such regulations or review procedures as the agency considers appropriate) with other Federal agencies, units of State or local government, industrial organizations (including corporations, partnerships and limited partnerships), public and private foundations, non-profit organizations (including universities), or other persons (including licensees of inventions owned by the Federal agency); and

(B) to negotiate licensing agreements under section 207 of title 35, United States Code, or other authorities for Government-owned inventions made at the laboratory and other inventions of Federal employees that may be voluntarily assigned to the Government.

(2) Under arrangements entered into pursuant to paragraph (1), a laboratory may—

(A) accept funds, services, and property from collaborating parties and provide services and property to collaborating parties;

(B) grant or agree to grant in advance to a collaborating party patent licenses, assignments, or options thereto, in any invention made by a Federal employee under the arrangement, retaining such rights as the Federal agency considers appropriate;

(C) waive, in whole or in part, any right of ownership which the Government may have under any other statute to any inventions made by a collaborating party or employee of a collaborating party under the arrangement; and

(D) to the extent consistent with any applicable agency requirements, permit employees or former employees of the laboratory to participate in efforts to commercialize inventions they made while in the service of the United States.

(3) Each agency shall maintain a record of all agreements entered into under this section.

(b) DEFINITION.—As used in this section, the term—

(1) "cooperative research and development agreement" means any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government provides personnel, services, facilities, equipment, or other resources (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipments, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the agency, except that such term does not include a procurement contract or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code; and

(2) "laboratory" means a facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research and development by employees of the Federal Government.".

(c) RELATIONSHIP TO LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.

SEC. 12. REWARDS FOR SCIENTIFIC, ENGINEERING, AND TECHNICAL PERSONNEL OF FEDERAL AGENCIES.

(a) CASH AWARDS PROGRAM.—The head of each Federal agency that is making expenditures at a rate of more than $50,000,000 per fiscal year for research and development in its Government-operated laboratories shall use the appropriate statutory authority to develop and implement a cash awards program to reward its scientific, engineering, and technical personnel for—

(1) inventions, innovations, or other outstanding scientific or technological contributions of value to the United States due to commercial applications or due to contributions to missions of the Federal agency or the Federal government; and

(2) exemplary activities that promote the domestic transfer of science and technology development within the Federal Government and result in utilization of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

(b) PAYMENT OF ROYALTIES.—Any royalties or other income received by an agency from the licensing or assignment or inventions under this section or under section 207 of title 35, United States Code, or other authority shall be retained by the agency whose laboratory produced the invention, except that beginning with fiscal year 1988, such royalties or other income shall be subject to appropriations, and shall be disposed of as follows:

(1) At least 15 percent of the royalties or other income received each year by the agency on account of any invention shall be paid to the inventor or coinventors if they were employees of the agency at the time the invention was made. Payments made under this paragraph are in addition to the regular pay of the employee and to any awards made to that employee, and such payments shall not affect the entitlement or limit the amount of the regular pay, annuity, or other awards to which the employee is otherwise entitled or for which the employee is otherwise eligible.

(2) The balance of any royalties or related income earned during any fiscal year after paying the inventors' portions under paragraph (1) shall be transferred to the agency's Government-operated laboratories with a substantial percentage being returned to the laboratories whose inventions produced the royalties or income. Such royalties or income may be retained by the laboratory up to the limits specified in this paragraph, and used—

(A) for mission-related research and development of the laboratory;

(B) to support development and education programs for employees of the laboratory;

(C) to reward employees of the laboratory for contributing to the development of new technologies and assisting in the transfer of technology to the private sector, and for inventions of value to the Government that will not produce royalties;

(D) to further scientific exchange to and from the laboratory; and

(E) for payment of patenting costs and fees and other expenses incidental to promoting, administering, and licensing inventions, including the fees or costs for services of other agencies or other persons or organizations for invention management and licensing services.

If the balance for any laboratory after paying the inventors' shares under paragraph (1) exceeds 5 percent of the annual budget of the laboratory, 75 percent of the excess shall be paid to the Treasury of the United States and the remaining 25 percent shall be used for the purposes listed in subparagraphs (A) through (E), by the end of the fiscal year subsequent to the one in which they were received. Any funds not so used or obligated by the end of such fiscal year shall be paid to the Treasury of the United States.

(c) ASSIGNED INVENTIONS.—If the invention was one assigned to the agency either (1) by a contractor, grantee, or the recipient of a cooperative agreement of the agency, or (2) by an employee of the agency that was not working in the laboratory at the time the invention was made, the agency unit that funded or employed or assinged the assignee shall, for purposes of this section, be considered to be a laboratory.

(d) REPORTS.—In making their annual budget submissions, Federal agencies shall submit to the appropriate authorization and appropriation committees of both Houses of the Congress summaries of the amount of royalties or other income received and expenditures made (including inventor awards) under this section.".

SEC. 13. EMPLOYEE ACTIVITIES.

(a) IN GENERAL.—If a Federal agency which has the right of ownership to an invention under this act does not intend to file for a patent application or otherwise to promote commercialization of such invention, the agency may allow the inventor, if the inventor is a Government employee or former employee who made the invention during the course of employment with the Government, to retain title to the invention (subject to reservation by the Government of a nonexclusive, nontransferrable, irrevocable, paid up license to practice or have practiced the invention throughout the world by or on behalf of the Government). In addition, the agency may condition the inventor's right to title on the timely filing of a patent application in cases when the Government determines that it has or may have a need to practice the invention.

(b) DEFINITION.—For purposes of this section, Federal employees include "special Government employees" as defined in section 202 of title 18, United States Code.

(c) RELATIONSHIP TO OTHER LAWS.—Nothing in this section is intended to limit or diminish existing authorities of any agency.

Section 12 of that Act

SEC. [12] *14.* NATIONAL TECHNOLOGY MEDAL.

(a) ESTABLISHMENT.—There is hereby established a National Technology Medal, which shall be of such design and materials and bear such inscriptions as the President, on the basis of recommen-

dations submitted by the Office of Science and Technology Policy, may prescribe.

(b) AWARD.—The President shall periodically award the medal, on the basis of recommendations received from the Secretary or on the basis of such other information and evidence as he deems appropriate, to individuals or companies, which in his judgment are deserving of special recognition by reason of their outstanding contributions to the promotion of technology or technological manpower for the improvement of the economic, environmental, or social well-being of the United States.

(c) PRESENTATION.—The presentation of the award shall be made by the President with such ceremonies as he may deem proper.

Section 13 of that Act

SEC. [13] *15.* PERSONNEL EXCHANGES.

The Secretary and the National Science Foundation, jointly, shall establish a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories. Such program shall include both (1) federally supported exchanges and (2) efforts to stimulate exchanges without Federal funding.

Section 14 of that Act

SEC. [14] *16.* AUTHORIZATION OF APPROPRIATIONS.

(a) There is authorized to be appropriated to the Secretary for purposes of carrying out section 6, not to exceed $19,000,000 for the fiscal year ending September 30, 1981, $40,000,000 for the fiscal year ending September 30, 1982, $50,000,000 for the fiscal year ending September 30, 1983, and $60,000,000 for each of the fiscal years ending September 30, 1984, and 1985.

(b) In addition to authorizations of appropriations under subsection (a) there is authorized to be appropriated to the Secretary for purposes of carrying out the provisions of this Act, not to exceed $5,000,000 for the fiscal year ending September 30, 1982, and $14,000,000 for each of the fiscal years ending September 30, 1983, 1984, and 1985.

(c) Such sums as may be appropriated under subsections (a) and (b) shall remain available until expended.

(d) To enable the National Science Foundation to carry out its powers and duties under this Act only such sums may be appropriated as the Congress may authorize by law.

Section 15 of that Act

SEC. [15] *17.* SPENDING AUTHORITY.

No payments shall be made or contracts shall be entered into pursuant to this Act except to such extent or in such amounts as are provided in advance in appropriation Acts.

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Calendar No. 626

99TH CONGRESS
2d Session

SENATE

REPORT
99-284

MISCELLANEOUS CHANGES IN LAWS AFFECTING THE COAST GUARD

APRIL 22 (legislative day, APRIL 21), 1986.—Ordered to be printed

Mr. DANFORTH, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany H.R. 739]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 739) an act relating to the documentation of the vessel *Marilyn* to be employed in the coastwise trade, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill do pass.

PURPOSE OF THE BILL

H.R. 739, as reported, makes a variety of changes in laws administered by or affecting the Coast Guard and other Federal agencies with responsibilities for maritime programs.

The bill makes technical amendments to subtitle II of title 46, United States Code, to correct spelling errors, resolve ambiguities in definitions, correct inadvertent omissions made during the revision of title 46 during the last Congress, and otherwise improve implementation of the statute by the Coast Guard.

The legislation extends until November 1, 1983, the exemption from certain fire safety requirements under which the *Delta Queen* paddlewheel riverboat has operated for the past 18 years. In conjunction with the exemption, the bill requires that the owner of the vessel notify prospective passengers that it does not comply with applicable fire safety standards and prohibits the owner from waiving liability for loss due to fire caused by the owner's negligence.

The bill will permit the Coast Guard to make certain improvements to a State-owned pier in New Bedford, MA, for the purpose

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of preparing to receive newly-constructed medium endurance cutters that will be based there.

This legislation declares two waterways "non-navigable" in order to relieve the Coast Guard of its responsibility for issuing permits for the construction of new bridges over these waterways, neither of which supports any navigation.

H.R. 739, as reported, permits the Coast Guard to enter into a contract with a municipal electrical utility in Alaska without notifying Congress in advance of its intent to do so, as would otherwise be required by the Coast Guard Authorization Act of 1984 (Public Law 98–557).

The bill provides Jones Act waivers, thereby granting or restoring coastwise trading or fisheries privileges to ten vessels. The waiver for two of those vessels, the *Jane E* and *Diane M,* is subject to the condition that they may be operated only in the waters of the Atlantic Ocean and the Gulf of Mexico. This limitation is designed to avoid adverse impacts upon current operators that might result from operation of those two tugs in other waters of the United States.

The legislation resolves an ambiguity in current law to facilitate drug enforcement activities of the Coast Guard.

The Coast Guard is authorized to enter a cost-sharing arrangement with Cape May, NJ, to improve Cape May roads used primarily by the Coast Guard.

The Secretary of Transportation is given explicit authority to promulgate regulations relating to marine safety and seamen's welfare.

The bill closes a loophole in current law which allows foreign tugs to be used to tow foreign-registry vessels in U.S. ports.

The legislation resolves an ambiguity in the definition of "common carrier" under the Shipping Act of 1984 (Public Law 98–237) as it applies to chemical parcel-tankers. It clarifies that such vessels are not common carriers subject to regulation by the Federal Maritime Commission and are, therefore, not exempt from the antitrust laws.

The bill provides authority for three vessels, currently tied up and rusting, to be scrapped in foreign yards if the purchaser and country in which they will be scrapped are acceptable to the Secretary of Transportation and the Secretary is given at least one-half of the profits realized from the scrapping.

Finally, the legislation authorizes two vessels to be sold to foreign purchasers if neither the Department of Transportation nor the Navy elects to buy them at the purchase price tendered by the foreign purchaser.

Background and Needs

CORRECTIONS TO TITLE 46, UNITED STATES CODE

The maritime safety laws in title 46, United States Code, which are administered by the Coast Guard, were reorganized, modernized, and recodified by Public Law 98–89 in the last Congress. Several omissions and errors were made during the recodification. This legislation corrects those errors.

"DELTA QUEEN"

The *Delta Queen* is a passenger vessel operating on the Ohio and Mississippi Rivers. The vessel was built in 1926 and was registered as a historic treasure by the Department of the Interior and National Trust for Historic Preservation in 1970. It is one of two authentic paddlewheel passenger steamboats in existence in the United States. The hull of the *Delta Queen* is made of steel, but the superstructure is constructed of wood. The International Convention for the Safety of Life at Sea (SOLAS), to which the United States is a party, requires that certain types of passenger vessels be constructed of fire retardant materials. The *Delta Queen* is subject to SOLAS and therefore has needed a legislative exemption from this requirement in order to operate.

The *Delta Queen* was initially exempted from the applicable fire safety requirements for 2 years in 1968. Since then, the vessel has received four extensions of the exemption. In 1970, Congress extended the exemption until 1973. In 1973, 1976, and 1980, Congress granted the vessel additional extensions. The current exemption will expire in 1988. This legislation will extend it until 1993, allowing the owners of the *Delta Queen* to make advance bookings and make commitments for future capital improvements of the vessel.

The owners of the *Delta Queen* currently notify passengers through promotional literature that the vessel "does not meet the requirements of S.O.L.A.S." and that "Congress has specifically exempted the *Delta Queen* from S.O.L.A.S.". This notification is made in an effort to inform the passengers that the vessel does not meet applicable fire safety requirements. It does not explain that S.O.L.A.S. is the International Convention for the Safety of Life at Sea, nor does it explain which requirements of that Convention the *Delta Queen* does not meet. While desiring to extend the exemption, the Committee feels that additional notice should be provided.

This legislation specifically requires that potential passengers be notified that the *Delta Queen* "does not comply with applicable fire safety standards due primarily to the wooden construction of berthing areas." It also requires that if a passenger suffers a loss caused by fire, due to the negligence of the *Delta Queen*, the owners cannot disclaim liability for that loss. It is the Committee's understanding that the owners of the *Delta Queen* will delete liability disclaimers from all printed material given to passengers.

BOATING SAFETY PROGRAM

The boating safety amendments to the Deficit Reduction Act of 1984 (Public Law 98-369) made numerous changes to Federal boating safety laws. Among the changes was the creation of a boating safety account, with annual authorized funding of $45 million a year. Of that amount, one-third, or $15 million, was to be available to the Coast Guard for operating expenses. Those funds, pursuant to the act, were to remain available until expended. One section—section 13104—was carried over from pre-existing law. It provides that if the Coast Guard fails to spend the full amount of money available in one year, the money can be carried over into the next year, but the amount of new money available in the following year must be reduced accordingly. It is the Committee's intent that the

Coast Guard have the flexibility to spend an average amount of $15 million per year from the Boating Safety Account, regardless of whether it is spent within the calendar constraints of the fiscal year. H.R. 739, as reported, provides that funds derived from the boating safety account for Coast Guard operating expenses are not subject to those provisions of section 13104 of title 46, United States Code.

NEW BEDFORD PIER

The Coast Guard plans to homeport two of its 270 feet medium endurance cutters at the State-owned pier in New Bedford, MA. The 270 footers were designed to operate with relatively few maintenance crew on board but with the use of a shore-based maintenance team. In order to base the 270 footers in New Bedford, the Coast Guard needs to build a maintenance support building near the pier and to improve the facilities on the pier. The improvements that need to be made exceed the limits established by section 322 of the Economy Act (40 U.S.C. 278a) with respect to improvements that may be made to government leased property. This legislation will allow the Coast Guard to lease property from the State of Massachusetts and to construct a maintenance support building on that property. Since the Coast Guard has a 25-year lease at the pier, the government will receive the full benefit of the improvements and construction at the pier.

LAWYER'S DITCH

Essex County, NJ, is planning to construct a resource recovery solid waste facility in Newark, NJ. The facility requires an access roadway to the adjacent major highway. To complete the road, a small bridge is required to traverse a drainage ditch called "Lawyer's Ditch." The ditch is dry most of the time. Occasionally, it carries upland water runoff into the Passaic River and is affected to a minimal degree by tidal flows. The water depth is 12 inches at its deepest. Because the ditch is subject to the ebb and flow of the tides, it is considered navigable and the Coast Guard is, therefore, required to approve construction over this ditch through a permitting process. This legislation declares Lawyer's Ditch "non-navigable" for purposes of the Coast Guard's bridge permitting responsibilities in order to avoid the potentially lengthy permit process for building a bridge over this ditch.

BAYOU LAFOURCHE

The portion of the Bayou Lafourche from the Mississippi River to Thibodaux, LA, was declared "a non-navigable waterway of the United States" by Public Law 90–149 in 1967. This bill would declare approximately four additional miles of the waterway "non-navigable" for purposes of the Coast Guard's bridge permitting responsibilities. The purpose of declaring this waterway "non-navigable" is the same as that for declaring Lawyer's Ditch, NJ, "non-navigable." It will eliminate the need for a Coast Guard permit for the construction of a bridge over Bayou Lafourche in Thibodaux, LA.

ST. PAUL ISLAND, AK

The Coast Guard currently generates its own power on St. Paul Island, AK, for its long-range aids to navigation facility. The municipal utility located on St. Paul Island has proposed to construct a wind-generated power system with full capacity diesel backup generators. If the project is completed as planned, the Coast Guard could receive its power from the facility and eventually automate its aids to navigation facility on the Island.

The Coast Guard Authorization Act of 1984 (Public Law 98-557) requires that the Coast Guard wait 30 legislative days before contracting with the private sector for activities currently performed by the Coast Guard. That notification requirement will apply to any arrangement the Coast Guard makes with the municipal utility on St. Paul Island for power generation. The delay caused by this notification requirement may effectively block the municipal power generation project because the utility needs a commitment from the General Services Administration or the Coast Guard to retain its financing and meet construction deadlines. This legislation exempts the Coast Guard from the notification provision of the Coast Guard Authorization Act of 1984 for the purpose of entering into a contract with a municipal utility in Alaska.

COASTWISE TRADING AND FISHERIES PRIVILEGES

H.R. 739, as reported, provides waivers of certain Jones Act provisions, thereby granting or restoring coastwise trading or fisheries privileges to ten vessels which would not otherwise be eligible for the necessary documentation by the Coast Guard.

Subject to certain limited exceptions, the provisions of law commonly known as the Jones Act provide that only those vessels built in the United States, continuously documented under the laws of the United States, and continuously owned by U.S. citizens may transport merchandise or passengers in the coastwise trade of the United States. They also provide that only U.S.-built vessels amy engage in the fisheries of the United States.

When the facts applicable to a particular vessels suggest that the U.S.-built or the U.S.-owned requirements have not been satisfied, the Coast Guard may not issue a document granting coastwise trading or fisheries privileges for that vessel unless the requirements are statutorily waived. In the past, such waivers have been enacted based upon case-by-case analyses indicating that substantial funds were expended without knowledge of a defect in the chain of title, for example, and that documentation for commercial service or the fisheries would not adversely affect domestic commerce and would serve the national interest. The following is a brief summary of the facts and considerations warranting legislation for each of the ten vessels.

"MARILYN"

The *Marilyn* (Maryland registration number MD 3533 AA), a classic Grand Banks schooner of about 7 gross tons and 42 feet in length, was built in Nova Scotia in 1935. It is presently owned by Van K. and Marilyn Nield of Annapolis, MD. It is numbered as a

pleasure vessel and cannot engage in the coastwise trade or the fisheries of the United States. It cannot be used as desired because it was not built in the United States.

The present owners desire to use the vessel for charter parties, carrying not more than six passengers. The vessel was purchased in September 1978. After more than $75,000 was spent on its restoration, the owners learned that a foreign-built vessel could not be used in the coastwise trade. The schooner was rebuilt at Logan's Marine Service, Crisfield Shipyard, Crisfield, MD, and the total investment to date is close to $100,000.

"ROYAL STAR"

The *Royal Star* (Michigan registration number MC 9707 J), a Chris Roamer pleasure vessel of about 5 gross tons and 35 feet in length, was built in Holland, MI, in 1960. It is presently owned by Kenneth J. Schmidt and is registered as a commerical charter boat by the State of Michigan. It cannot engage in the coastwise trade of the United States because of a defect in its chain of title.

The present owner desires to use the vessel in the coastwise trade for the carriage of passengers who charter the vessel for sport fishing. The vessel was purchased in March 1984 for $13,500. Soon thereafter, the owner was asked by the Coast Guard to produce documentation showing a continuous chain of title of ownership by U.S. citizens. The owner was not able to do so because records kept by the State of Michigan either were not availaable or were incomplete. Therefore, alien ownership in the chain of title is presumed by the Coast Guard and the necessary certificate of documentation will not be issued.

"ALASKAN SHORES"

The *Alaskan Shores* (U.S. official number 603879), a vessel of 428 gross tons and 125 feet in length, was built in Ambridge, PA, in 1945. It is owned by Carl E. Moses of Unalaska, AK. It is registered for the fisheries, but is not authorized to engage in the coastwise trades of the United States because of alien ownership in its chain of title.

Its present owner desires to use the vessel in the coastwise trade, and the restriction makes it impossible to obtain financing for the necessary conversion. Although the vessel had previously been sold to foreign interests, it was never operated by them and never left the United States.

"SHEARWATER"

The *Shearwater* (U.S. official number 260827), a vessel of 58 gross tons and 65 feet in length, was built by Shain Manufacturing Company of Seattle, WA, in 1942 for the U.S. Navy as a ferry boat. It is presently owned by Jack Walsh of San Diego, CA. It is not authorized to engage in the coastwise trade of the United States because of a defect in its chain of title.

The *Shearwater* was decommissioned by the Navy in 1946 and sold to a private party in 1950. It was rebuilt and then served as a harbor cruise ship, authorized to carry 100 passengers or more in

the San Pedro/Long Beach area for the next 27 years. In 1984, the present owner began to rebuild the vessel. As of March 1985, one-third of the original hull planking had been replaced, 90 percent of the hull fastening below the waterline had been replaced, and new oak sister ribs had been installed. After great expense, it was discovered that the vessel had at one time been sold to a U.S. resident alien. While this legislation would permit the vessel, *Shearwater*, to engage in the coastwise trade of the United States, the Committee understands that this vessel will not be used as a cruise vessel on a major commercial scale. The vessel has been recently refitted for the purpose of serving as a private office and occasional charter vessel to be used exclusively for small scale private business and social functions. The intent of the Committee is to allow the *Shearwater* to obtain the necessary Coast Guard documentation and inspection to operate in that fashion for those purposes.

"GYPSY ROSE"

The *Gypsy Rose* (California registration number CF 4291 HF), a vessel of about 15 gross tons and 38 feet in length, was built in Taiwan. It is owned by Charles R. Bagby of Los Alamitos, CA. It is numbered as a pleasure vessel and cannot engage in the coastwise trade or the fisheries of the United States because it was not built in the United States.

The present owner desires to use the vessel for commercial fishing, as a replacement for a fishing vessel that was lost at sea in 1984. The vessel was purchased in a salvage sale for $13,333 after suffering extensive fire damage. More than $28,000 has been expended on restoration work to date in U.S. shipyards and there will be additional repair and outfitting costs. After spending considerable sums on the vessel's restoration, the owner learned that a foreign-built vessel could not be used in the coastwise or fisheries trade. The owner also discovered that the foreign-built impediment could have been waived had there been, prior to commencing its restoration, timely compliance with the procedures required under the Wrecked Vessels Act (46 App. U.S.C. 14). Under this act, if restoration costs in U.S. shipyards are at least three times the salvage value of the vessel, it is considered to be a vessel built in the United States.

"ELIMINATOR"

The *Eliminator* (U.S. official number 507572), a vessel of 56 gross tons and 65 feet in length, was built in New Orleans, Louisiana, in 1967. It is owned by the Pelican Party Boat Corporation and is documented as a fishing vessel. It cannot engage in the coastwise trade of the United States because of alien ownership in its chain of title.

The vessel was purchased in May 1984 for its salvage value of $14,000. Reconstruction of the vessel was performed by Port Canaveral Marina, Inc. at a cost of approximately $150,000. At all stages the reconstruction work was inspected by the Coast Guard for compliance with the small passenger vessel regulations. Upon completion of the work, the owner applied for documentation for operation as a party fishing boat. He was advised by the Coast Guard

documentation officer that the vessel could not engage in the coastwise trade because of alien ownership in the chain of title.

"PUKA KAI"

The *Puka Kai* (U.S. official number 677462) is a 1967 Owens Concorde of about 15 gross tons and 31 feet in length. It is owned by Richard R. Rogers of Kailua-Kona, HI, who desires to use the vessel in the coastwise trade for the carriage of up to six passengers who charter the vessel.

The present owner has located all but the second of the six previous owners. Alien ownership in the chain of title is presumed by the Coast Guard and the necessary certificate of documentation will not be issued.

"LOBSTER HOUSE"

The *Lobster House* (Panama registration number 494-PEXT), a vessel of about 57 feet in length, was built by Monterey Marine, Inc. at Stuart, FL, in 1981 and sold by them to a Panamanian company before ever being documented in the United States. Ownership of the vessel, under the name of *The Plaza,* was transferred twice to other Panamanian corporations and remained in Panamanian ownership until October 15, 1985, when it was acquired by its present owner, The Cold Spring Fish and Supply Company, a fish packing and restaurant business operating in Cape May Harbor, NJ. The owner desires to use the vessel in the coastwise trade for the carriage of passengers who will charter the vessel for sport fishing. Documentation for coastwise trade cannot be issued by the Coast Guard because the vessel was owned and operated by foreign corporations.

"JANE E" AND "DIANE M"

The *Jane E* (Bahamian official number 315924) and the *Diane M* (Bahamian official number 315925) are sister vessels, each of 133 gross tons and 80 feet in length. They were built by the Diamond Manufacturing Co., Inc. of Savannah, GA, in 1961. They are owned by Maritec Marine International of Jacksonsville, FL. The vessels cannot engage in the coastwise trade of the United States. Although they were originally built in the United States, they cannot be used in our domestic commerce because they were documented and reflagged in a foreign country.

The present owners purchased the vessels in 1983 for approximately $100,000 and have spent more than $25,000 for repairs since then. They desire to reflag the vessels and use them as towing vessels in the coastwise trade. The bill authorizes documentation of the vessels for such purposes but only for operations in the waters of the Atlantic Ocean and the Gulf of Mexico. This limitation is designed to avoid adverse impacts upon current operators that might result from operation of those two tugs in other waters of the United States.

COAST GUARD DRUG ENFORCEMENT

H.R. 739, as reported, resolves an uncertainty about the meaning of "customs waters of the United States" as that term is used in the Act of September 15, 1980 (21 U.S.C. 955a(c)). That section serves as a basis for the Coast Guard's drug enforcement efforts involving persons aboard foreign-flag vessels that are within the "customs waters," even if they are not within the narrower territorial sea or otherwise subject to the jurisdiction of the United States. The Coast Guard's ability to enforce anti-drug laws against such persons and vessels under the section thus depends upon whether they occur within the customs waters of the United States.

The breadth of the United States' customs waters is, in most cases, 12 miles from the coast, but it can be extended by agreement with another nation granting U.S. officials authority to enforce U.S. laws against its vessels within a greater distance from its coast. Section 1401(j) of title 19, United States Code, provides that the "customs waters" of the United States extend 12 miles from the coast for every foreign vessel except for those vessels of a foreign nation with which the United States has a "treaty or other arrangement" permitting U.S. authorities to board, search, seize and enforce the laws of the United States. In those cases, "customs waters" extend out as far as the two nations agree to extend them by the treaty or arrangement, and the foreign-flag vessel is subject to the Coast Guard's enforcement jurisdiction to which its flag-nation has agreed.

An issue has arisen as to whether radio or telephone conversations resulting in agreement between U.S. officials and officials of the flag state are sufficient to constitute an "arrangement" between the two governments under 19 U.S.C. 1401(j), thereby placing the foreign vessel in the "customs waters of the United States" under 21 U.S.C. 955b(a) and subject to search, seizure, arrest and prosecution under 21 U.S.C. 955a(c) for illegal manufacture, distribution or possession of drugs.

The intent of the Committee is to confirm that permission granted to the Coast Guard by a foreign government for enforcement against its vessel does constitute an "arrangement" under section 1401(j) of title 19, United States Code, even if it is conveyed by radio or telephone and even if it is applicable to only the specific vessel in question at the time of such discussions. H.R. 739 clarifies current law by adding a phrase to section 2(a) of the Act of September 15, 1980 (21 U.S.C. 955b(a)) to confirm and avoid any doubt in the future that such agreements do constitute "arrangements." The Committee does not intend, by using the phrase "except that", to suggest that they would not constitute arrangements in the absence of the amendment.

CAPE MAY ROADS

The legislation authorizes the Coast Guard to enter a cost-sharing agreement with Cape May, NJ, to improve the Cape May roads abutting housing owned by the Coast Guard. Those roads are used primarily by Coast Guard personnel and their families for access to housing and to the Coast Guard Training Center.

The city of Cape May has initiated a project to repair and improve a portion of the roadways but it lacks funds to accomplish all the necessary work. The Coast Guard and Cape May have entered into an agreement to repair the roads. The legislation is needed to allow the Coast Guard to implement this agreement and expend up to $200,000 for that purpose from previously appropriated funds.

FOREIGN TOWING VESSELS

H.R. 739 closes a loophole in the law that could allow foreign companies to provide towing services in U.S. ports for foreign-flag vessels using foreign-built, owned, and operated tugs.

Subject to two exceptions, section 316(a) of title 46, United States Code, prohibits towage between points and within harbors of the United States by any vessel that is not wholly owned by citizens of the United States. One exception is for towage of vessels in distress; the other exception is for towage of vessels of foreign registry.

There is a risk of substantial adverse impact upon existing U.S.-flag companies providing ship assist services if the loophole created by the exception for towage of foreign-flag vessels is not closed. Ship assist work for foreign-flag vessels is a substantial part of U.S.-flag companies' business. If they were to lose that business, it would directly impact upon their ability to continue to serve U.S.-flag vessels operating in the United States' foreign and domestic commerce. U.S.-flag shipping companies could be further disadvantaged against their foreign competition, since ship assists would become still another area where the U.S. operator would be faced with higher costs than his foreign-flag competition. Foreign-flag operators could displace U.S. citizens by bringing in foreign crews for ship assist vessels. In the three major west coast harbors of Seattle/Tacoma, San Francisco, and Los Angeles/Long Beach, approximately 300 people work directly on ship assist tugs and generate an estimated $10 million for the local economies. Moreover, foreign-flag operators would be adding additional tugs to an already oversupplied market. Finally, foreign-flag ship assist operations in the United States could exacerbate the current balance of payments situation, since much of the money now paid by foreign ship operators for services provided in the United States would flow out of the country.

The Committee believes that the exception for towage of foreign-flag vessels is inconsistent with well established maritime law and policy in support of a viable domestic merchant marine. H.R. 739 deletes that exception while retaining the exception for towage of vessels in distress.

COMMON CARRIERS UNDER THE SHIPPING ACT OF 1984

H.R. 739 resolves an uncertainty as to whether chemical parcel-tankers, ferry boats, and ocean tramps are "common carriers" under the Shipping Act of 1984 (Public Law 98-237). The legislation makes it clear that they are not common carriers. As a result, their operations in U.S foreign commerce will not be governed by the Shipping Act and they will be neither subject to regulation by

the Federal Maritime Commission nor exempt from the antitrust laws.

Chemical parcel-tankers transport cargoes of bulk chemicals in segregated tanks (parcels), each of which is capable of holding from 100 to 2,500 tons of bulk chemicals. Four foreign-flag carriers comprise nearly 80 percent of the industry serving U.S. exporters of bulk chemicals.

The Federal Maritime Commission currently interprets the provisions of the Shipping Act of 1984 as requiring it to exempt chemical parcel tanker activities from the antitrust laws and to regulate such activities if they are found to be "common carriers" as defined by section 3(6) of the act (46 U.S.C. App. 1702(6)). That determination requires lengthy and costly administrative proceedings which often serve little or no useful purpose and may be counterproductive. If the Commission finds that chemical parcel-tankers are common carriers, their approved agreements enjoy the benefits of exemption from the antitrust laws under section 7 of the act. Yet their tariffs and service contracts would not be filled with and regulated by the Commission because carriers of "bulk cargo" are exempted by section 8 of the act from those filing requirements. As a result, such carriers can enjoy the benefits of antitrust immunity without the offsetting protections afforded to U.S. bulk chemical exporters by the regulatory oversight of the Federal Martime Commission.

The Committee believes that this anomalous result is undesirable and that chemical parcel-tanker agreements were not intended to be within the scope of agreements covered by the Shipping Act of 1984. The original Senate version of the Shipping Act, S. 47, specifically excluded "bulk cargo vessels" from coverage in the definition of "ocean common carrier." This meant that agreements covered by the Act would not have included those involving "bulk cargo vessels" such as chemical parcel-tankers. Although the final version of the act did not explicitly exclude "bulk cargo vessels," the Conference Report indicated that a new exemption for bulk carrier agreements was not intended. As the Report states:

> The elimination of this phrase removes an ambiguity; it is not intended to provide a new exemption from the antitrust laws for agreeements relating to the transportation of bulk commodities that the FMC has refused to approve under section 15 of the Shipping Act, 1916, or likely would not have approved under principles it has established for agreements relating to bulk commodities transportation. At the same time, the bill is intended to continue the antitrust exemption for agreements relating to the transportation of bulk commodities that the FMC has approved under the 1916 Act or likely would have approved. Finally, the bill is not intended to alter the definition of "bulk cargo" as that term has been interpreted under the Shipping Act, 1916.[1]

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[1] Conference Report, H. Rep. 98-600, 98th Cong. 2d Sess. (February 23, 1984) at p. 28.

No agreement involving chemical parcel-tanker service was approved under the 1916 Act. H.R. 739 clarifies that such agreements are outside the scope of the Shipping Act of 1984.

The provisions of H.R. 739 also remedy a drafting problem in the Shipping Act of 1984 relating to ferry boats and ocean tramps. The definition of "ocean common carrier" in section 3(18) of the Act states that the term does not include such vessels. The provisions of the act such as those of section 10 proscribing prohibited acts, however, apply to the more inclusive class of "common carriers" and not only to "ocean common carriers." The legislation explicitly excludes ferry boats and ocean tramps from the definition of "common carrier," thereby resolving any uncertainty as to whether the provisions of the act governing "common carrier" are applicable to activities involving those vessels.

"PICTOR," "PROCYON," AND "ZELIMA"

The vessels *Pictor, Procyon,* and *Zelima* were purchased by Levin Metals Corporation from the Maritime Administration on October 19, 1981, under the terms of Public Law 96-260, which authorized the sale of these and two other obsolete vessels that had been maintained in the National Defense Reserve Fleet. That 1980 legislation authorized the sale of the vessels to U.S. citizens for documentation, and operation in the United States and stipulated that if they were to be scrapped, they must be scrapped in the United States. Although it had been anticipated that U.S. commercial interests would purchase and convert the vessels, none submitted bids. All the bidders were scrappers and only three (*Pictor, Procyon,* and *Zelima*) of the five vessels were sold.

The three vessels have been moored at the owner's facilities in California since they were acquired from the government. The owner has attempted to sell the vessels for conversion and operation in the U.S. fisheries, but the cost of conversion appears to be prohibitively high. The alternative under the terms of the 1980 legislation—dismantling of the vessels for scrap in the United States—is also apparently not feasible. While there were several scrapping facilities on the West Coast in 1980, there are now no active facilities due to the high costs of labor, insurance, safety, environmental protection measures, and other factors. Most vessel scrapping is currently done in Taiwan, the Republic of Korea, India, and Bangladesh.

In view of the difficulties precluding compliance with the domestic conversion or scapping requirements of the 1980 legislation, the owner desires authorization to scrap the vessels in a foreign facility acceptable to the Secretary of Transportation with reimbursement to the United States of not less than one-half of any profits realized from the foreign scrapping. The legislation directs the Secretary of Transportation to permit the owner to do so.

"PAUL BUNYAN" AND "JOHN HENRY"

The *Paul Bunyan* (U.S. official number 602272) and *John Henry* (U.S. official number 599294), specialized "heavy lift" vessels of approximately 56 feet in length and 3,000 tons each, were built by Peterson Building, Sturgeon Bay, WI, and delivered on July 3, 1979,

and December 5, 1978, respectively. Approximately $7.4 million of Construction Differential Subsidy funds were paid to the shipyard in conjunction with each of the vessels.

The current owner, American Heavy Lift Company of Houston, TX, purchased the vessels in January 1985 from Gulf Oil Corporation as an inseparable part of a package composed of five oil tankers and the two heavy lift vessels.

The two vessels are prohibitively expensive to operate under current and foreseeable economic conditions, offering no special functions or capabilities for which there is a sufficient market. They burn 22 tons of gasoil a day at a speed of only 13 knots. Between the dates of delivery and 1984, the vessels made a total of 44 voyages at a net loss to the former owner of more than $10 million.

The current owner has no use for the vessels, which are tied up at a cost of nearly $600,000 each year, and has asked to sell them to a foreign purchaser. H.R. 739, as reported, authorizes such a sale notwithstanding restrictions such as that set forth in section 503 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1153) that vessels receiving Construction Differential Subsidy payments remain documented under the laws of the United States for not less than 25 years. The legislation requires, however, that before consummating any such sale, the seller offer the Secretary of Transportation and the Secretary of Navy the option to purchase either or both of the vessels under the same terms and conditions as those offered by the foreign purchaser. This requirement is designed to make the vessels available to the Secretaries for acquisition at the world market price.

Legislative History

H.R. 739 was received by the Senate from the House of Representatives and referred to the Committee on December 4, 1985.

The provisions of H.R. 739 were modified to restrict the permissible operations of the *Jane E* and *Diane M* and included in an amendment in the nature of a substitute for H.R. 2466, which had been received from the House of Representatives and placed directly on the Senate calendar. H.R. 2466, as so amended by Senator Danforth on behalf of the Committee, was adopted by unanimous consent in the Senate on December 19, 1985, and in the House of Representatives on January 29, 1986. It was vetoed by the President on February 14, 1986. The veto message identified seven sections of H.R. 2466 as reasons which compelled the President to return it without his approval.

The Committee considered an amendment in the nature of a substitute for H.R. 739 at its Executive Session on March 25, 1986. The amendment substitutes for the provisions of H.R. 739 all of the provisions of H.R. 2466 as adopted by the Senate and House of Representatives except those seven sections of H.R. 2466 identified as objectionable by the President in his veto message. The Committee ordered favorably reported H.R. 739, as so amended, without objection on March 25, 1986.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, DC, April 7, 1986.

Hon. John C. Danforth,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 739, an act to make miscellaneous changes in laws affecting the United States Coast Guard, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation, March 25, 1986. We estimate that H.R. 739 will result in costs to the federal government of $150,000 in fiscal year 1987.

The cost of the act is attributable to Section 2, which authorizes the Coast Guard to enter into a long-term lease for a site on a pier in New Bedford, Massachusetts, for maintenance assistance team and vessel support facilities. The bill also authorizes the Coast Guard to construct the facilities. Assuming enactment of H.R. 739 and appropriation of the necessary amounts by October 1, 1986, the entire construction cost of $150,000 is expected to be spent in fiscal year 1987. We expect that other provisions of the act will have no significant budgetary impact.

H.R. 739 will result in no cost to state and local governments.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,

Sincerely,

Rudolph G. Penner, *Director.*

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

H.R. 739, as reported, makes changes in laws administered by or affecting the Coast Guard and other Federal agencies with responsibilities for maritime programs.

Section 1(5)(A)(v) of the bill authorizes the Secretary of Transportation to issue regulations to allow individuals to be transported in emergencies when such transport would otherwise be unlawful. Section 1(7)(A)(iii) directs the Secretary to issue regulations relating to the manner in which the owner of the *Delta Queen* must notify prospective passengers that the vessel does not meet fire safety standards. Finally, section 9 gives the Secretry explicit authority to issue regulations to carry out subtitle II of title 46, United States Code. The Secretary has issued such regulations in the past pursuant to implicit authority to implement the statutory provisions. Thus, the regulations under section 1(5)(A)(v) provide for relaxation

of restrictions; those under section 1(7)(A)(iii) impose a burden on only one business entity enjoying a statutory exemption in order to ensure adequate notice to the public; and section 9 authorizes regulations that the Secretary has been issuing in the past without such authorization. The Committee does not anticipate that these regulations will have any adverse effect on the number of type of individuals and businesses regulated, the economic impact of such regulation, the personal privacy of affected individuals, or the paperwork required from such individuals and business.

SECTION-BY-SECTION ANALYSIS

SECTION 1

The first section makes miscellaneous amendments to title 46 of the U.S. Code, Shipping. Specifically:

Paragraph (1)—corrects a spelling error;

Paragraph (2)(A)—clarifies the definition of "passenger" as it applies on large passenger vessels. Prior to Public Law 98–89 (the revision of title 46) there was no statutory definition of passenger on a large passenger vessel. However, the term was defined by Coast Guard regulation (46 CFR 70.10–35) and by the International Convention for the Safety of Life at Sea (SOLAS) regulations (Chapter I, Regulation 2(e)i)). Several recent passenger status questions have highlighted the desirability of amending the statutory definition to reflect the regulatory/treaty definition that the Coast Guard has historically applied. The purpose of this amendment is to define "passenger" in a manner that is consistent with SOLAS;

Paragraph (2) (B), (C), and (D)—make technical clarifying changes to the definition of "passenger" as it applies to small passenger vessels and to sailing school vessels by treating these two types of vessels separately in 46 U.S.C. 2101(21);

Paragraph (3)—corrects a spelling error;

Paragraph (4)—provides that steam yachts (recreational vessels that are propelled by steam) that are between 40 feet and 65 feet in length must have their boilers, engines, and other operating machinery inspected by the Coast Guard, as is required by existing law. This amendment would in effect delete the existing requirement that these vessels be subject to a complete inspection. As long as the boiler, engine, and other operating machinery that are operated by steam are inspected, a steam vessel poses no greater threat to safety than any other recreational vessel that is not subject to inspection;

Paragraph (5)(A)(i)—changes the word "carry" on derivative thereof to the word "transport" or its derivative throughout section 3304 of title 46, United States Code. The Committee notes that transporting a passenger is the same as carrying a passenger and this amendment is merely standardizing the language in the shipping laws;

Paragraph (5)(A)(ii)—resolves an ambiguity in section 3304(a) of title 46, United States Code. It provides that only those cargo vessels that are inspected by the Coast Guard can carry passengers, unless otherwise permitted by law;

Paragraph (5)(A) (iii) and (iv)—make technical changes;

Paragraph (5)(A)(v)—provides the authority for the Secretary of Transportation to permit a vessel to transport any number of individuals in addition to its crew during an emergency or when making a rescue at sea. This eliminates an inconsistency between section 3304, which restricted the number of individuals who could be transported in addition to the crew to a maximum of 16, and section 2304, which imposed a duty upon the master of a vessel to provide assistance to individuals found at sea in danger of being lost. Additionally, it provides emergency authority to carry individuals not contemplated by section 2304;

Paragraph (5)(B)—makes a conforming change consistent with paragraph (5)(A)(i);

Paragraph (6)—corrects a spelling error;

Paragraph (7)—extends for 5 years, until November 1, 1993, the present exemption for vessels operating only on the inland rivers from the requirements of section 3503 of subtitle II of title 46 of the U.S. Code. That section requires that any passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a certificate of inspection only if the vessel is constructed of fire-retardant materials. This requirement was enacted in 1966, with a 2-year exemption for vessels operating only on the inland rivers. Congress has since acted to extend the exemption through November 1, 1988. This paragraph would extend the exemption for five additional years.

At present, only the passenger vessel *Delta Queen*, a paddlewheel riverboat, is operating under the exemption. It applies to only those vessels that were in operation prior to January 1, 1968, the effective date of the legal requirement that passenger vessels be constructed of fire-retardant materials. In effect, this provision applies only to the *Delta Queen*.

This paragraph will also require that the owner of the *Delta Queen* notify prospective passengers that the vessel does not comply with applicable fire safety standards. It further prohibits the *Delta Queen* from waiving liability for loss due to fire if the fire is caused by negligence of the owner;

Paragraph (8)—corrects a spelling error;

Paragraph (9)—amends section 4308 of title 46, United States Code, by substituting the term "individual in charge" for the term "operator." In the codified shipping laws, the term "operator" means an operator who has been licensed by the Coast Guard. However, this provision applies to recreational vessels which do not normally have licensed operators on board. This revision would ensure application of the section as originally intended;

Paragraphs (10) through (13)—make technical changes;

Paragraph (14)—amends, section 8903 of title 46, United States Code, correcting an error made during the revision of title 46 (Public Law 98–89). Public Law 98–89 inadvertently extended the requirement that operators of self-propelled uninspected passenger vessels be licensed by the Coast Guard to a requirement that operators of all uninspected passenger vessels be licensed by the Coast Guard. As a result, individuals who charge for sailing lessons in small sailboats and individuals that operate white water rafting tours may be required to have a Coast Guard license to operate. Such a requirement was not intended. This section would reinstate

the law as it existed before the passage of Public Law 98–89 to state that only self-propelled uninspected passenger vessels must be operated by an individual licensed by the Coast Guard. Self-propelled means operated by machinery.

Paragraphs (15), (16), and (17)—make technical corrections;

Paragraph (18)—amends section 13104 of title 46, United States Code, so as to ensure that funds made available to the Coast Guard from the boating safety account remain available until expended; and

Paragraph (19)—restores a provision of law regarding a vessel master's lien that was inadvertently omitted by the revision of title 46 Public Law 98–89). This section does not restore the lien retroactively; it would become effective and available only as of the effective date of this legislation and is not being restored for assertion or application to events occurring before the effective date of this legislation.

SECTION 2

Section 2(a)—provides long-term leasing authority that will permit the Coast Guard to acquire a site on the State pier at New Bedford, MA, for the purpose of locating a maintenance assistance team and ship support facilities on the pier.

Section 2(b)—provides that the lease may be effective only to the extent that funds are provided for in appropriations acts.

Section 2(c)—authorizes the use of appropriated funds for the construction and improvement of the facilities, notwithstanding the limitations of section 322 of the Economy Act of 1932.

SECTION 3

This section declares Lawyer's Ditch, a waterway located in Newark, NJ, to be "non-navigable" for the purpose of Coast Guard bridge permitting laws. The effect of this section is to eliminate the need for a Coast Guard permit for construction of a bridge over this waterway.

SECTION 4

This section provides a specific exemption from a requirement of the Coast Guard Authorizaton Act of 1984 (Public Law 98–557). That law requires that the Coast Guard notify Congress 30 days before entering into a contract with the private sector for performance of activities currently performed by the Coast Guard. This section exempts the Coast Guard from this requirement with respect to contracting with a municipal power utility in Alaska, for the purpose of supplying electrical power.

SECTION 5

This section declares Bayou Lafourche, a waterway located in Louisiana, to be "non-navigable" for the purpose of Coast Guard bridge permitting laws. The effect of this section is to eliminate the need for a Coast Guard permit for construction of a bridge over this waterway.

SECTION 6

This section provides that, notwithstanding certain sections of

chapter 121 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883), certain vessels may be issued documentation to engage lawfully in the coastwise trade and fisheries of the United States. The vessels included are the *Marilyn, Royal Star, Alaskan Shores, Shearwater, Gypsy Rose, Eliminator, Puka Kai, Lobster House, Jane E,* and *Diane M.* The waters in which the *Jane E* and *Diane M* may operate under such documentation are limited to those of the Atlantic Ocean and the Gulf of Mexico.

SECTION 7

This section clarifies current law by adding a phrase to section 2(a) of the Act of September 15, 1980 (21 U.S.C. 955b(a)) to confirm that agreements reached by representatives of the United States and a foreign government through telephone, radio or other discussions constitute "arrangements" and are, therefore, a sufficient basis for Coast Guard enforcement of anti-drug laws involving vessels of that foreign government off our coast.

SECTION 8

This section authorizes the Coast Guard to enter into a cost-sharing arrangement with Cape May, NJ, to improve Cape May roads used primarily by the Coast Guard and to expend up to $200,000 of previously appropriated funds on a non-recurring basis for that purpose.

SECTION 9

This section authorizes the Secretary of Transportation to prescribe regulations to carry out the provisions of subtitle II of title 46, United States Code.

SECTION 10

This section closes a loophole in current law that would allow foreign tugs to be used to tow foreign-flag vessels in U.S. ports. Paragraph (1) makes a technical change, updating the citations to the applicable provisions of the current United States Code. Paragraph (2) deletes "a vessel of foreign registry" from the class of exempt vessels that need not be towed by U.S. tow boats.

SECTION 11

This section clarifies that ferry boats, ocean tramps, and chemical parcel-tankers are not "common carriers" subject to regulation by the Federal Maritime Commission and are, therefore, not exempt from the antitrust laws under the Shipping Act of 1984 (Public Law 98–237). Paragraph (1) adds a phrase for that purpose to the definition of "common carrier" and defines "chemical parcel-tanker." Paragraph (2) makes a conforming change, deleting a phrase regarding ferry boats and ocean tramps from the definition of "ocean common carrier," since they are necessarily excluded from the definition by virtue of their exclusion from the definition of "common carrier."

SECTION 12

This section provides authority for three obsolete, former Navy vessels, the *Pictor, Procyon,* and *Zelima,* to be scrapped in foreign

yards if the purchaser and country in which they will be scrapped are acceptable to the Secretary of Transportation and the seller agrees to reimburse the United States with at least one-half of the profits realized from such sale for scrapping.

SECTION 13

This section authorizes two vessels, the *Paul Bunyan* and *John Henry,* to be sold to foreign purchasers if neither the Secretary of Transportation nor the Secretary of the Navy elects to buy them at the purchase price tendered by the foreign purchaser.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 46, UNITED STATES CODE

Section 2101 of that title

§ 2101. General definitions

In this subtitle—

(1)–(13) * * *

(14) "hazardous material" means a liquid material or substance that is—

(A) flammable or combustible;

(B) designated a hazardous substance under section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321); or

(C) designated a hazardous material under section 104 of the Hazardous [Material] *Materials* Transportation Act (49 U.S.C. 1803);

(15)–(20) * * *

(21) "passengers"—

(A) on a passenger vessel, means an individual carried on the vessel except—

(i) the master; or

(ii) a [crewmember.] *crewmember or other individual engaged in the business of the vessel who has not contributed consideration for carriage on board the vessel.*

(B) on a small passenger vessel [or a sailing school vessel,] means an individual carried on the vessel except—

(i) the owner or representative of the owner;

(ii) the master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(iii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(iv) an employee of the demise charterer of the vessel engaged in the business of the demise charterer;

[(v) a guest on board a vessel that is being operated only for pleasure, or a guest on board a sailing school vessel, who has not contributed consideration for carriage on board;

[(vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board; or

[(vii) a sailing school instructor or sailing school student.]

(v) a guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or

(vi) an individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.

(C)–(E) * * *

(F) on a sailing school vessel, means an individual carried on the vessel except—

(i) the owner or representatives of the owner;

(ii) the master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(iii) an employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter,

(iv) an employee of the demise charterer of the vessel engaged in the business of the demise charterer;

(v) a guest on board the vessel who has not contributed consideration for carriage on board; or

(vi) a sailing school instructor or sailing school student.

(22)–(46) * * *

Section 2103 of that title

§ 2103. Superintendence of the merchant marine

The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of this subtitle is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle and shall carry out correctly and uniformly administer this subtitle [and regulations prescribed under this subtitle.] *The Secretary may prescribe regulations to carry out the provisions of this subtitle.*

Chapter 33 of that title

CHAPTER 33—INSPECTION GENERALLY

Sec.
3301. Vessels subject to inspection.
3302. Exemptions.
3303. Reciprocity for foreign vessels.

3304. [Carrying] *Transporting* individuals in addition to crew.
3305.–3318. * * *

Section 3304 of that title

§ 3304. [Carrying] *Transporting individuals in addition to crew*

(a) A documented vessel [carrying cargo that carries] *transporting cargo that transports* not more than 12 individuals in addition to the crew on international voyages, or not more than 16 individuals in addition to the crew on other voyages, in not subject to inspection as a passenger vessel or a small passenger [vessel.] *vessel if the vessel is otherwise subject to inspection under this chapter.*

(b) [Before an individual in addition to the crew is carried] *Except when subsection (e) of this section applies, before an individual in addition to the crew is transported* on a vessel as permitted by this section, the owner, charterer, managing operator, agent, master, or individual in charge of the vessel first shall notify the individual of the presence on board of dengerous articles as defined by law, and of other conditions or circumstances that would constitute a risk of safety to the individual on board.

(c) [The privilege] *A privilege* authorized by this section applies to a vessel of a foreign country that affords a similar privilege to vessels of the United States in trades not restricted to vessels under its own flag.

(d) A fishing, fish processing, or fish tender vessel that transports not more than 12 individuals employed in the fishing industry in addition to the crew is not subject to inspection as a passenger or small passenger vessel.

(e) The Secretary may by regulation allow individuals in addition to the crew to be transported in an emergency or under section 2304 of this title.

Section 3318 of that title

§ 3318. Penalties

(a)–(e) * * *

(f) A person shall be fined not less than $1,000 but not more [then] *than* $10,000, and imprisoned for not less than 2 years but not more [then] *than* 5 years, if the person—

(1)–(4) * * *

(g)–(l) * * *

Section 3302 of that title

§ 3302. Exemptions

(a)–(h) * * *

(i)(l)–(4) * * *

(5) If a vessel issued a permit creates an immediate threat to the safety of life or the environment, or is operated in a manner inconsistent with the terms of the permit or the requirements of paragraph (2) of this subsection, the permit may be revoked. The owner, [charter] *charterer,* managing operator, agent, master, or individual in charge of a vessel issued a permit, that willfully permits the vessel to be operated, or operates, the vessel in a manner inconsist-

ent with the terms of the permit, is liable to the United States Government for a civil penalty of not more than $1,000.

(j) * * *

(k) Only the boiler, engine, and other operating machinery of a steam vessel that is a recreational vessel of not more than 65 feet overall in length are subject to inspection under section 3301(9) of this title.

Section 3503 of that title

§ 3503. Fire-retardant materials

(a) A passenger vessel of the United States having berth or stateroom accommodations for at least 50 passengers shall be granted a certificate of inspection only if the vessel is constructed of fire-retardant materials. [Before November 1, 1988, this section does not apply to a vessel operating only on the inland rivers.] *Before November 1, 1993, this section does not apply to a vessel in operation before January 1, 1968, and operating only on the inland rivers.*

(b)(1) When a vessel is exempted from the fire-retardant standards of this section—

(A) the owner or managing operator of the vessel shall notify prospective passengers that the vessel does not comply with applicable fire safety standards due primarily to the wooden construction of passenger berthing areas;

(B) the owner or managing operator of the vessel may not disclaim liability to a passenger for death, injury, or any other loss caused by fire due to the negligence of the owner or managing operator; and

(C) the penalties provided in section 3504(c) of this title apply to a violation of this subsection.

(2) The Secretary shall prescribe regulations under this subsection on the manner in which prospective passengers are to be notified.

Section 3174 of that title

§ 3714. Inspection and examination

(a)(1)–(3) * * *

(4) The Secretary shall prescribe by regulation reasonable fees for an inspection or examination conducted under this section outside the United States, or which, when involving a foreign vessel, is conducted under a contract authorized by paragraph (3) of this subsection. The owner, [charter] *charterer,* or managing operator of a vessel inspected or examined by the Secretary is liable for the fees. Amounts received as fees shall be deposited in the Treasury.

(5) * * *

(b)–(c) * * *

Section 4308 of that title

§ 4308. Termination of unsafe operation

If an official charged with the enforcement of this chapter observes a recreational vessel being operated without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition (as defined in regulations prescribed under this chapter)

and, in the judment of the official, the operation creates an especially hazardous condition, the official may direct the [operator] *individual in charge* of the recreational vessel to take immediate and reasonable steps necessary for the safety of individuals on board the vessel, including directing the [operator] *individual in charge* to return to a mooring and to remain there until the situation creating the hazard is corrected or ended.

Section 7111 of that title

§ 7111. Oral examinations for licenses

An individual may take an oral examination for a license to serve on a fishing, fish processing, or fish tender vessel not required to be inspected under [Part] *part* B of this subtitle.

Section 7312 of that title

§ 7312. Scale of employment

(a)–(d) * * *

(e) When the service of [able seaman—limited] *able seamen—limited* or able seamen—special is authorized for only a part of the required number of able seamen on board a vessel, the combined percentage of those individuals so qualified may not be greater than 50 percent of the required number.

(f) * * *

Section 8104 of that title

§ 8104. Watches

(a)–(j) * * *

(k) On a fish processing vessel subject to inspection under part B of this subtitle, the licensed individuals and deck crew shall be divided, when at sea, into at least 3 [watchers] *watches*.

(l)–(m) * * *

Section 8502 of that title

§ 8502. Federal pilots required

(a) Except as provided in subsection (g) of this section, a coastwise seagoing vessel shall be under the direction and control of a pilot licensed under section 7101 of this title if the vessel is—

(1) not sailing on register;

(2) underway;

(3) not on the high seas; and

(4)(A) propelled by machinery and subject to inspection under [Part] *part* B of this subtitle; or

(B) subject to inspection under chapter 37 of this title.

(b)–(g) * * *

Chapter 89 of that title

CHAPTER 89—SMALL VESSEL MANNING

Sec.
8901. Freight vessels.
8902. Small passenger vessels.

8903. [Uninspected] *Self-propelled, uninspected* passenger vessels.
8904. Towing vessels.
8905. Exemptions.
8906. Penalty.

Section 8903 of that title

§ 8903. [Uninspected] *Self-propelled, uninspected passenger vessels*

[An] *A self-propelled,* uninspected passenger vessel shall be operated by an individual licensed by the Secretary to operate that type of vessel, under prescribed regulations.

Section 10709 of that title

§ 10709. Distribution

(a)(1) If the money, property, and wages of a seaman, including proceeds from the sale of property, are not more [then $1,500 in value, and] *than $1,500 in value, the court,* subject to deductions it allows for expenses and at least 60 days after receiving the money, property, and [wages, the court] *wages,* may deliver the money, property, and wages to a claimant proving to be—

(A) the seaman's surviving spouse or child;

(B) entitled to the money, property, and wages under the seaman's will or under a law or at common law; or

(C) entitled to secure probate, or take out letters of administration, although no probate or letters of administration have been issued.

(2)–(3) * * *

(b) * * *

Section 12122 of that title

§ 12122. Penalties

(a) A person that violates this chapter or a regulation prescribed under this chapter is liable to the United States Government for a civil penalty of not more than $500. *Each day of a continuing violation is a separate violation.*

(b)–(c) * * *

Section 13102 of that title

§ 13102. Program acceptance

(a) The Secretary shall make a contract with, and allocate and distribute amounts from the Fund established under section 13107 of this title to, a State that has an approved State recreational boating safety program, if the State demonstrates to the Secretary's satisfaction that—

(1)–(3) * * *

(4) the program submitted by that State designates a State lead authority or agency that will carry out or [coordinate carrying the State] *coordinate carrying out the State* recreational boating safety program supported by financial assistance of the United States Government in that State, including the requirement that the designated

State authority or ageny submit required reports that are necessary and reasonable to carry out properly and efficiently the program and that are in the form prescribed by the Secretary.

(b)–(d) * * *

Section 13104 of that title

§ 13104. Availability of allocations

(a) * * *

(b) Amounts available to the Secretary *for State recreational boating safety programs* that have not been allocated at the end of a fiscal year shall be carried forward as part of the total allocation of amounts for the next fiscal year that may be expended under this chapter.

Chapter 111 of that title

CHAPTER 111—PROTECTION AND RELIEF

Sec.
11101. Accommodations for seamen.
11102. Medicine chests.
11103. Slop chests.
11104. Destitute seamen.
11105. Wages on discharge when vessel sold.
11106. Wages on justifiable complaint of seamen.
11107. Unlawful engagements void.
11108. Taxes.
11109. Attachment of wages.
11110. Seamen's clothing.
11111. Limit on amount recoverable on voyage.
11112. Master's lien of wages.

Section 11111 of that title

§ 11111. Limit on amount recoverable on voyage

(a) * * *

§ 11112. Master's lien for wages

The master of a documented vessel has the same lien against the vessel for the master's wages and the same priority as any other seaman serving on the vessel.

THE ACT OF SEPTEMBER 15, 1980

Section 2 of that Act

SEC. 2. As used in this Act—

(a) "Customs waters" means those waters as defined in section 401(j) of the Tariff Act of 1930 (19 U.S.C. 1401(j)), *except that an event otherwise qualifying as an arrangement under such section does not lose that qualification by the fact that consent to, or the terms of, such arrangement are communicated by radio, telephone, or other similar means, or by how specific such arrangement is as to the vessel to which such arrangement applies.*

(b)–(e) * * *

Section 4370 of the Revised Statutes of the United States

SEC. 4370. Use of Foreign Vessels in United States Ports—

(a) TOWING UNITED STATES VESSELS; FINES AND PENALTIES.—It shall be unlawful for any vessel not wholly owned by a person who is a citizen of the United States within the meaning of the laws respecting the documentation of vessels and not having in force [a certificate of registry, a certificate of enrollment, or a license, issued pursuant to title XLVIII or title L of the Revised Statutes, or a certificate of award of number issued pursuant to the Act of June 7, 1918, as amended (U.S.C., 1934 edition, Supp. IV, title 46, sec. 288),] *a certificate of documentation issued under sections 12106 or 12107 of title 46, United States Code,* to tow any vessel other than [a vessel of foreign registry, or a vessel in distress,] *a vessel in distress* from any port or place in the United States, its Territories or possessions, embraced within the coastwise laws of the United States, to any other port or place within the same, either directly or by way of a foreign port or place, or to do any part of such towing, or to tow any such vessel, from point to point within the harbors of such places. The owner and master of any vessel towing another vessel in violation of the provisions of this section shall each be liable to a fine of not less than $250 nor more than $1,000, which fines shall constitute liens upon the offending vessel enforceable through the district court of the United States for any district in which such vessel may be found, and clearance shall not be granted to such vessel until the fines have been paid. The towing vessel shall also be further liable to a penalty of $50 per ton on the measurement of every vessel towed in violation of this section, which sum may be recovered by way of libel or suit.

(b)–(e) * * *

THE SHIPPING ACT OF 1984

Section 3 of that Act

SEC. 3. DEFINITIONS.

As used in this Act—

(1)–(5) * * *

(6) "common carrier" means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—

(A) assumes responsibility for the transportation from the port or point of receipt to the port of point of destination, and

(B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country[.] *except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker. As used in this paragraph, 'chemical parcel-tanker' means a vessel whose cargo-carrying capability consists of individual cargo tanks for bulk chemicals that are a permanent part of the vessel, that have segregation capability with piping systems to*

permit simultaneous carriage of several bulk chemical cargoes with minimum risk of cross-contamination, and that has a valid certificate of fitness under the International Maritime Organization Code for the Construction and Equipment of Ships Carrying Dangerous Chemicals in Bulk.

(7)–(17) * * *

(18) "ocean common carrier" means a vessel-operating common carrier[; but the term does not include one engaged in ocean transportation by ferry boat or ocean tramp.].

(19)–(27) * * *

○